

**Chicago Clean Energy, LLC's January 3, 2012 Further Corrected
Version of the Form of SNG Agreement as Issued by the Illinois
Power Agency October 11, 2011**

**SUBSTITUTE NATURAL GAS
PURCHASE AND SALE AGREEMENT**

by and between

Chicago Clean Energy, LLC

as Seller

and

[NAME OF UTILITY]

as Buyer

dated as of

_____, _____

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SUBSTITUTE NATURAL GAS PURCHASE AND SALE AGREEMENT

This Substitute Natural Gas Purchase and Sale Agreement (as amended from time to time, together with all Exhibits and Schedules, this “Agreement”) is entered into as of _____, _____ (the “Execution Date”), by and between CHICAGO CLEAN ENERGY, LLC, a Delaware limited liability company (“Seller”) and [NAME OF UTILITY], a [type of legal entity] (“Buyer” and together with Seller, the “Parties” and individually each of Seller and Buyer is referred to as a “Party”). The capitalized terms used in this Agreement not otherwise defined herein have the meanings specified in Schedule I (Definitions).

RECITALS:

WHEREAS, Seller is developing a project on a brownfield site in Chicago, Illinois that contemplates, among other things, the design and construction of a gasification facility (the “Plant”); and

WHEREAS, the development, construction and operation of the Plant will result in job creation in Illinois; and

WHEREAS, Seller intends for the Plant to qualify and operate as a “clean coal SNG brownfield facility” as that term is defined in the Public Act and, as such, to use coal that has a high volatile bituminous rank and greater than 1.7 pounds of sulfur per million Btu content (“Coal”) and petroleum coke to manufacture methane gas of pipeline quality, suitable as a substitute for natural gas; and

WHEREAS, Seller desires to sell a portion of such substitute natural gas (“SNG”) produced by the Plant to Buyer and Buyer desires to purchase a portion of such SNG produced by the Plant; and

WHEREAS, Buyer is authorized pursuant to the Public Act to enter into certain contracts for the purchase of SNG from clean coal SNG brownfield facilities that meet certain requirements specified in the Public Act; and

WHEREAS, because Seller intends for the Plant to qualify and operate as a clean coal SNG brownfield facility under the Public Act and Seller intends for this Agreement to qualify as a “sourcing agreement” under the Public Act, Buyer is willing to enter into this Agreement with Seller; and

WHEREAS, Seller and Buyer desire to enter into this Agreement for the purchase and sale of Conforming SNG on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the promises and the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
TERM AND TERMINATION

1.1 Term. This Agreement shall become effective upon execution by both Parties and, if not earlier terminated in accordance with **Section 1.2 (Termination by Buyer)** or **Section 1.3 (Termination by Seller)** below, this Agreement shall continue in effect for the Term.

1.2 Termination by Buyer. Buyer may terminate this Agreement prior to the end of the Term:

(a) immediately, and without penalty or liability whatsoever to Seller, upon delivery of notice of termination if the Construction Commencement Milestone is not satisfied on or before July 1, 2015; or

(b) upon thirty (30) days' prior written notice to Seller if Seller fails to achieve any of Seller's Milestones by the Outside Completion Date for such Milestone; provided, however, that (i) the Outside Completion Date for any Milestone shall be extended on a day for day basis for any action or omission by Buyer to the extent that such action or omission directly and materially adversely affected or affects Seller's ability to achieve such Milestone; (ii) to be effective, any such notice must be delivered by Buyer to Seller not later than ninety (90) days after Buyer first has written notice from Seller of Seller's failure to meet such Milestone; and (iii) within such ninety (90) day period Buyer may notify Seller that it waives then existing Milestone deadline for a specified period of time, after which Buyer will have a renewed right to terminate if the Milestone is not met at the end of the extension period (without the requirement that Buyer provide any additional advance notice); or

(c) upon thirty (30) days' prior written notice to Seller if an Event of Default by Seller has occurred and is continuing (provided that such termination shall occur automatically without the necessity for such written notice in the case of an Event of Default by Seller under **Section 12.1(a) (Events of Default)**); or

(d) [intentionally omitted]

(e) upon thirty (30) days' prior written notice to Seller if there has been a Force Majeure preventing performance by Seller of its obligations under this Agreement that has continued beyond the maximum duration as provided in **Section 13.4 (Maximum Duration)**; or

(f) upon thirty (30) days' prior written notice to Seller if the Commercial Production Date has not occurred by the Outside Completion Date for the Commercial Production Date; or

(g) upon thirty (30) days' prior written notice to Seller if an Event of Abandonment has occurred and is continuing.

Notwithstanding anything to the contrary in this Agreement, Buyer's termination of this Agreement pursuant to this **Section 1.2 (Termination by Buyer)** (other than pursuant to clause

(c) above) any time prior to the Financial Closing Date or the commencement of construction of the Plant shall be without liability of any kind whatsoever to Seller or Buyer.

1.3 Termination by Seller. Seller may terminate this Agreement prior to the end of the Term:

(a) upon five (5) days' prior written notice to Buyer at any time prior to its issuance of a Notice to Proceed after Seller determines through its engineering and design work or for any other reason that the construction of the Plant is not economically feasible and therefore desires to abandon construction of the Plant (whether such abandonment occurs prior to or after the issuance of the Notice to Proceed);

(b) upon thirty (30) days' prior written notice to Buyer if there has been a Force Majeure preventing performance by Buyer of its obligations under this Agreement that has continued beyond the maximum duration as provided in **Section 13.4 (Maximum Duration)**;

(c) upon thirty (30) days' prior written notice if an Event of Default by Buyer has occurred and is continuing (provided that such written notice shall be immediately effective upon delivery in the case of an Event of Default by Buyer under **Section 12.1(a) (Events of Default)**).

Notwithstanding anything to the contrary in this Agreement, Seller's termination of this Agreement pursuant to this **Section 1.3 (Termination by Seller)** (other than pursuant to clause (c) above) at any time prior to the Financial Closing Date or the commencement of construction of the Plant shall be without liability of any kind whatsoever to Seller or Buyer.

1.4 Survival. The following rights and provisions shall survive the termination of this Agreement: (a) the rights of either Party that have accrued during the Term prior to the effective date of the termination of this Agreement, including the right to receive payment for amounts due in respect of the period prior to the effective date of the termination of this Agreement, (b) setoff rights in accordance with **Section 12.3 (Setoffs)**, (c) the audit rights set forth in **Section 9.6 (Audits)**, (d) dispute resolution provisions in **Article X (Dispute Resolution)**, (e) the limitation of liabilities in **Section 12.6 (Limitation on Liability)**, (f) the rights of the Parties associated with the Consumer Protection Reserve Account under **Section 12.7(a) (Consumer Protection Reserve Account)** and the right of Buyer associated with Buyer's Allocated Percentage of the Contract Savings Guaranty Amount under **Section 2.6 (Contract Savings Guaranty)**, (g) the right of either Party to indemnification by the other Party, (h) the provisions of **Section 14.8 (Governing Law; Submission to Jurisdiction)**, and (i) the confidentiality obligations in **Section 14.15 (Confidentiality)**.

ARTICLE II

PURCHASE AND SALE

2.1 Purchase Obligation. Subject to the provisions of this Agreement, including, but not limited to **Article XIII (Force Majeure)**, and **Section 12.5 (Cover Damages)**, from the Commercial Production Date and thereafter during the Term, Buyer shall be obligated to

purchase and take the Buyer's Allocated Percentage of the Annual Contract Quantity from Seller in accordance with this **Article II (Purchase and Sale)**.

(a) Buyer shall purchase and take the Buyer's Allocated Percentage of the Conforming SNG tendered at the Title Transfer Point by Seller on a monthly basis, up to the Buyer's Allocated Percentage of the Applicable MCQ, but not exceeding (i) the Buyer's Allocated Percentage of the ACQ in any Contract Year, and (ii) Buyer's Allocated Percentage of the Maximum DCQ on any Gas Day. If Seller fails to deliver the Buyer's Allocated Percentage of the MCQ in any month, Seller may increase the Buyer's Allocated Percentage of MCQ to the Buyer's Allocated Percentage of the Increased MCQ for each succeeding month until the Buyer's Allocated Percentage of Monthly Actual Annualized Average as of the beginning of any subsequent month is equal to or higher than the Buyer's Allocated Percentage of the Monthly Annualized Average. The preceding sentence is in addition to and not in substitution for Buyer's rights under **Section 2.2(b) (Delivery)** and **Section 12.5 (Cover Damages)**. Notwithstanding anything to the contrary in the foregoing, in each month Buyer shall be obligated to take and pay for the Buyer's Allocated Percentage of the Conforming SNG tendered by Seller at the Title Transfer Point for Buyer, but in all cases subject to the limitations of the Buyer's Allocated Percentage of the Applicable MCQ and the ACQ limitations and the Buyer's Allocated Percentage of the Maximum DCQ and subject to any other limitations in this Agreement. Buyer shall be liable for the cover damages described in **Section 12.5 (Cover Damages)** for any failure to take the Buyer's Allocated Percentage of the Conforming SNG tendered by Seller in accordance with this **Section 2.1(a) (Purchase Obligation)** on any Gas Day. Buyer shall have no obligation to purchase or accept delivery of Conforming SNG that is not delivered to Buyer at the Title Transfer Point.

(b) Buyer shall pay for the Buyer's Allocated Percentage of the Conforming SNG tendered by Seller to the Title Transfer Point up to the Buyer's Allocated Percentage of the Applicable MCQ in any contract month and up to the Buyer's Allocated Percentage of the ACQ in any Contract Year based on the product of (i) the Buyer's Allocated Percentage of the MDQ times (ii) the Monthly Invoice Contract Price for such contract month. Notwithstanding anything herein to the contrary, Seller shall be solely responsible for any cost or charge from any Receiving Pipeline attributable to the failure of the SNG to satisfy the Output Quality Requirements and Buyer shall have no obligation to take or pay for Conforming SNG that is not accepted by any Receiving Pipeline.

2.2 Manufacture, Delivery, Sale, and Acceptance

(a) **Manufacture.** Seller shall operate the Plant in accordance with Good Industry Practice and will use Commercially Reasonable Efforts to manufacture and produce Conforming SNG up to its design capacity subject to (i) Planned Outages, (ii) Force Majeure, (iii) unplanned or forced outages, and curtailments, in each case not attributable to Seller's willful misconduct or failure to follow Good Industry Practice, or (iv) as provided in **Section 4.4 (Limitation on Delivery)**. Buyer shall not exert control over Seller's manufacturing of SNG nor the operations and maintenance of the Plant. Seller acknowledges and agrees that as soon as it has received notice from the Receiving Pipeline that SNG being delivered to the applicable pipeline by Seller is not Conforming SNG, Seller shall immediately stop production of SNG at

Seller's expense until it can deliver Conforming SNG to the Receiving Pipeline. Seller or Seller's agent shall be responsible for monitoring the quality of the Conforming SNG and any charges imposed by any Receiving Pipeline based on a failure of the Conforming SNG to meet the Output Quality Requirements. Any such charges shall be paid by Seller and shall not be recouped from Buyer.

(b) Delivery. Subject to the provisions of this Agreement including but not limited to the limitations described in **Section 2.2(a) (Manufacture)**, from the Commercial Production Date and thereafter during the Term, Seller shall tender for delivery and sell to Buyer, and Buyer shall purchase from Seller, Conforming SNG at the Title Transfer Point in the amount nominated for delivery by Seller to Buyer in accordance with the day ahead nomination procedures set forth in the Scheduling and Nominating Protocol; provided, that the nominations made by Seller cannot exceed the Buyer's Allocated Percentage of the Maximum DCQ on any Gas Day. The amount nominated by Seller in any contract month shall not exceed the Buyer's Allocated Percentage of the Applicable MCQ and shall not exceed the Buyer's Allocated Percentage of the ACQ in any calendar year. Seller's failure to deliver the amount nominated for delivery in its day ahead nomination for any reason other than Force Majeure and Buyer's inability to accept such deliveries shall result in Seller's liability for cover damages to Buyer as described in **Section 12.5 (Cover Damages)**.

(c) Sale. Subject to Force Majeure and the sale of Incremental Production, Seller shall not sell or deliver SNG or Conforming SNG in any contract month to any Person other than Buyer and the other Purchasing Utilities (or, if directed by Buyer, to any agent or marketer on behalf of Buyer); provided, that any Conforming SNG nominated for sale by Seller to Buyer, up to the Buyer's Allocated Percentage of the Maximum DCQ on each Gas Day and up to Buyer's Allocated Percentage of the Applicable MCQ in any month, delivered to the Title Transfer Point for, or made available to, Buyer in accordance with the day ahead nomination procedures set forth in the Schedule and Nominating Protocol, that Buyer fails to accept for any reason (including Force Majeure), may be sold by Seller in mitigation of its damages. Buyer shall not be required to purchase any amounts in excess of the Buyer's Allocated Percentage of the Maximum DCQ on any Gas Day and Seller shall not be required to tender to Buyer any amounts in excess of the Annualized Daily Average on any Gas Day.

(d) Acceptance and Title Transfer. Buyer shall accept and assume title to Conforming SNG that is delivered to Buyer at the Title Transfer Point and sold to Buyer in accordance with **Section 2.1(a) (Purchase Obligation)**. Seller shall transfer to Buyer title to the Buyer's Allocated Percentage of any Conforming SNG that is delivered to Buyer at the Title Transfer Point. To the extent Buyer is unable to take physical delivery of Conforming SNG that it is required to purchase under this Agreement or Buyer does not require such Conforming SNG, Seller may resell such Conforming SNG to a third party, through an agent, marketer or otherwise.

(e) Excess SNG Production. Any SNG produced by the Plant in any month in excess of the Applicable MCQ or in any Contract Year in excess of the ACQ may be marketed and sold as Incremental Production by Seller directly to a third party buyer or indirectly through an agent, marketer or otherwise on Seller's behalf.

2.3 Accounting Services. Seller shall perform the following accounting services on a monthly basis:

(a) report to the Buyer and the Trustee the quantities of Conforming SNG delivered to the Title Transfer Point;

(b) provide Buyer and Trustee daily price, quantity and revenue information on a monthly basis, including a calculation of the Monthly Weighted Average Chicago City-gate Price for each month; and

(c) maintain and retain books and records with respect to the calculation of the foregoing amounts and accounts, which books and records shall be subject to audit by Buyer in accordance with Section 9.6 (Audits); and

(d) provide all other reasonably necessary information to the Trustee to enable the Trustee to perform its accounting services pursuant to the Accounting and Depositary Services Agreement.

2.4 Trustee Services. By no later than the Financial Closing Date, the Trustee, the Parties and the other Purchasing Utilities shall collectively enter into an Accounting and Depositary Services Agreement, pursuant to which the Parties and the other Purchasing Utilities will engage the Trustee, to perform inter alia, the accounting services and account depositary services described below. The initial Accounting and Depositary Services Agreement shall (i) provide for an initial term of ten (10) years from the date that Seller issues the Notice to Proceed, subject to early termination for the Trustee's breach or event of default thereunder and subject to the renewal options set forth therein; and (ii) establish general parameters by which the Trustee will perform accounting and account depositary services described below. At least one (1) year prior to the expiration of the term of the initial Accounting and Depositary Services Agreement, the Parties and the other Purchasing Utilities shall meet to determine whether such Accounting and Depositary Services Agreement shall be renewed pursuant to the renewal options set forth therein or whether to consider proposals for a replacement Trustee. The Parties and the other Purchasing Utilities shall cooperate and coordinate with each other to ensure that an Accounting and Depositary Services Agreement as contemplated by and meeting the requirements of this Agreement is in place at all times during the Term. The Accounting and Depositary Services Agreement shall obligate the Trustee to perform certain services identified therein, including, inter alia, the following services:

(A) receive and deposit into an account established pursuant to the Accounting and Depositary Services Agreement, in its capacity as depositary agent for the Parties and the other Purchasing Utilities, all revenues received by Seller in connection with the sale of SNG on behalf of the Parties and the other Purchasing Utilities and all Incremental Revenues;

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- (B) calculate each month the items indicated in **Section 5.5 (Adjustments for Consumer Protection Reserve Account)** and transfer amounts accordingly pursuant thereto;
- (C) track the cumulative sum of positive or negative monthly Savings Tracking Amount indexed to 2010 real dollars in the CRCSTA on a monthly basis;
- (D) calculate the adjustments to the required balance of the Consumer Protection Reserve Account and the Monthly Invoice Contract Price based on information provided by Seller;
- (E) verify the calculation of Net Incremental Revenue as provided by Seller to Trustee;
- (F) prepare and send to Buyer, on behalf of Seller, with copies to Seller monthly invoices in accordance with **Section 9.1 (Monthly Invoices)** to Buyer for (1) the Monthly Invoice Contract Price and reflecting any available credits to the Adjusted Base Contract Price for amounts on deposit in the Consumer Protection Reserve Account, noting the net amount owing, if any, by Buyer for such month and transfer any amounts to Seller's Project Revenue Account as appropriate to reflect such credits and (2) the Positive Market Differential to be remitted to the Trustee for deposit to the Consumer Protection Reserve Account;
- (G) commencing after the end of the first twenty-four (24) month period following the CPD, calculate the CPR Principal Maximum Amount to be maintained in the Consumer Protection Reserve Account pursuant to **Section 12.7(d) (Consumer Protection Reserve Account)**;
- (H) submit all reports and certifications contemplated under the Public Act to be provided by the independent trustee thereunder;
- (I) maintain and retain books and records with respect to the calculation of the foregoing amounts and accounts, which books and records shall be subject to audit by the Parties, the other Purchasing Utilities and the ICC; and
- (J) cooperate with the Parties to implement any actions required by the Parties pursuant to their respective mutual obligations in **Section 6.5 (Tax Minimization)** and **Section 7.2 (Tax Minimization)**.

2.5 Replacement Trustee. If for any reason the Trustee is no longer able or willing to perform the services under the Accounting and Depositary Services Agreement on behalf of the Parties and the other Purchasing Utilities, or is in breach of its obligations thereunder, Buyer and Seller shall jointly cooperate with each other, and with the other Purchasing Utilities and the ICC, as applicable, to find a replacement trustee to perform the services under the Accounting and Depositary Services Agreement. In the event that Buyer and the other Purchasing Utilities, on the one hand, and Seller, on the other hand, cannot agree upon a replacement Trustee, the ICC shall have the right to select the replacement Trustee. If the terms and conditions of any replacement trustee agreement otherwise varies from the original or immediate predecessor Accounting and Depositary Services Agreement, Buyer and Seller shall have the right to approve such new terms (which approval shall not be unreasonably withheld, conditioned or delayed by either Party).

2.6 Contract Savings Guaranty. Seller guarantees that the aggregate savings to Retail Customers of Buyer realized over the course of the Term from Buyer's purchase of Conforming SNG under this Agreement will be equal to at least the Buyer's Allocated Percentage of the Contract Savings Guaranty Amount when comparing the Monthly Invoice Contract Price to the Monthly Weighted Average Chicago City-gate Price for each month over the Term of this Agreement, to be calculated by the Trustee pursuant to the Accounting and Depositary Services Agreement.

2.7 Contract Savings Reconciliation.

(a) At the expiration of the Term (or the earlier date of termination of this Agreement), the Parties shall determine whether or not a Contract Savings Guaranty Shortfall Amount exists.

(b) If a Contract Savings Guaranty Shortfall Amount exists at the expiration of the Term (or the earlier date of termination of this Agreement) and the Consumer Protection Reserve Account is not depleted, then within forty-five (45) days after the expiration of the Term (or such earlier date of termination on this Agreement), the Trustee shall transfer from the funds available in the Consumer Protection Reserve Account an amount equal to Buyer's Allocated Percentage of the (i) the Contract Savings Guaranty Shortfall Amount plus (ii) fifty percent (50%) of Buyer's Allocated Percentage of the amount, if any, remaining in the Consumer Protection Reserve Account after payment to Buyer of its Allocated Percentage of the Contract Savings Guaranty Shortfall Amount. The Trustee shall transfer to Seller the remaining funds, if any, in the Consumer Protection Reserve Account after making the foregoing transfers.

(c) To the extent that there are not sufficient funds in the Consumer Protection Reserve Account to permit Seller to rebate to Buyer the full amount of Buyer's Allocated Percentage of the Contract Savings Guaranty Shortfall Amount in cash at the expiration of the Term (or such earlier date of termination of this Agreement) as contemplated in clause (b) above, then, provided that at such time as there is no outstanding amounts owing to the Financing Parties in respect of any Financing, Buyer shall be entitled to require Seller to sell the Plant and apply the net sale proceeds from such sale first to satisfy the Contract Savings Guaranty Shortfall Amount; provided that in all instances, Seller can elect to satisfy the Buyer's Allocated

Percentage of the Contract Savings Guaranty Shortfall Amount by a cash payment of the Buyer's Allocated Percentage of any then remaining Contract Savings Guaranty Shortfall Amount to Buyer and provided, further, that if there are any amounts outstanding under the Financing, no sale of the Plant can be required by Buyer without the Financing Parties' prior written consent until such amounts outstanding under the Financing have been repaid.

(d) In the event that this Agreement is terminated prior to the expiration of the Term and both a Contract Savings Guaranty Shortfall Amount exists as of such earlier date of termination of this Agreement and amounts are outstanding under the Financing, then Buyer's claims against Seller for the Buyer's Allocated Percentage of any Contract Savings Guaranty Shortfall Amount shall be subordinated to the senior right of the Financing Parties to be repaid in full for all amounts owing in connection with the Financing.

2.8 Security for Contract Savings Guaranty Shortfall Amount. Seller shall grant the Trustee, as trustee for the Buyer and the other Purchasing Utilities, a lien over the Plant and the other non-cash assets of Seller to secure the Seller's obligations under **Section 2.6 (Contract Savings Guaranty)** to ensure that there is no Contract Savings Guaranty Shortfall Amount, which lien shall be executed, delivered and recorded on or before the Commercial Production Date. The lien and security interest contemplated by this **Section 2.8 (Security for Contract Savings Guaranty Shortfall Amount)** shall be documented in a mortgage and security agreement in form and substance mutually agreed upon by the Parties and the other Purchasing Utilities prior to the Commercial Production Date (the "Mortgage and Security Agreement"). Such lien and security interest shall include all accessions to and substitutions and replacements for and proceeds of, any of such collateral. Subject to the senior rights of the Financing Parties and the limitations set forth in the foregoing, such Mortgage and Security Agreement shall include an agreement of Seller to promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, control agreements, pledges, escrow agreements or consents or other papers as may be necessary or desirable in the reasonable judgment of Buyer to create, preserve, perfect, maintain the perfection of, reinstate the perfection of, or validate, the lien and security interest granted pursuant thereto or to enable Buyer to exercise and enforce its rights thereunder with respect to such lien and security interest. The Mortgage and Security Agreement shall be granted in favor of the Trustee acting on behalf of Buyer and the other Purchasing Utilities to secure Buyer's and the other Purchasing Utilities' respective allocated percentages of the Contract Savings Guaranty Shortfall Amount existing as of the end of the Term (or the earlier date of termination of this Agreement), in all cases subject to the senior prior rights of the Financing Parties to the extent that any of the Financing Parties have any senior secured debt outstanding as of the date of expiration or earlier date of termination of this Agreement). If the Financing is outstanding at the time that the Mortgage and Security Agreement is executed, the Mortgage and Security Agreement shall be made expressly subordinated to the senior lien and mortgage and security agreement executed in favor of the Financing Parties to secure amounts outstanding under the Financing and all rights of payments owing to Buyer in respect of the Buyer's Allocated Percentage of the Contract Savings Guaranty in accordance with and pursuant to a subordination and intercreditor agreement in form and substance reasonably acceptable to the Financing Parties and the Buyer.

2.9 Coal Usage Reconciliation. Seller shall track the quantities of petcoke and coal as a percentage of the total feedstock used by Seller in each month, and the aggregate quantities of petcoke and coal as a percentage of the total feedstock used by Seller for the Contract Year to date and provide monthly and annual reports of such percentages to Buyer and the IPA to the extent required by the Public Act. If a Coal Usage Shortfall Amount exists at the expiration of the Term (or the earlier date of termination of this Agreement), Seller agrees to enter into an agreement in form and substance acceptable to Seller with the Illinois Power Agency or successor agency for the remedy of that shortfall.

2.10 Adjustment to Price and Buyer's Allocated Percentage.

(a) The Parties acknowledge that as of the Execution Date the Annual Contract Quantity in this Agreement and the Other SNG Contract executed on or about the Execution Date is based on 41,521,985,498 scf and the maximum aggregate annual quantity of SNG that could be sold from the Plant to Purchasing Utilities pursuant to the Public Act is 43.5 Bcf.

(b) The Parties agree that, at any time prior to the projected Financial Closing Date (as such date is determined by Seller in its sole discretion), Seller may in its sole discretion contract under additional Other SNG Contracts to sell to Peoples and/or North Shore a quantity of SNG reflecting no less than their respective allocations set forth on **Schedule 2.10 (Original Allocations)**, or to one or more other qualified buyers at any time after the Execution Date. If, after the Execution Date, Seller enters into any additional Other SNG Contracts with one or more qualified buyers, as determined by Seller in its sole discretion (which qualified buyers may not include Peoples or North Shore), then the percentage specified in the definition of "Buyer's Allocated Percentage" in the Other SNG Contract expected to be executed on or about the Execution Date shall be reduced to account for the volume of Incremental SNG Quantity contracted to be sold by Seller to qualified buyers other than Peoples or North Shore in each Contract Year pursuant to each additional Other SNG Contract entered into by Seller after the Execution Date.

(c) If Seller enters into such an additional Other SNG Contract with Peoples and/or North Shore, then the following adjustments shall automatically apply from and after the effective date of each Other SNG Contract entered into by Seller with Peoples and/or North Shore:

(i) The quantities specified in the definitions of "Annual Contract Quantity", and "Monthly Annualized Average" shall each be adjusted to reflect the volume represented by the aggregate amount of the Re-Allocated SNG Quantity contracted to be purchased by Peoples and/or North Shore in the Other SNG Contracts entered into by Peoples and/or North Shore after the Execution Date.

(ii) The percentage specified in the definition of "Buyer's Allocated Percentage" shall be recalculated (reduced) based on the reduced volume of SNG to reflect the Re-Allocated SNG Quantities.

(d) The following adjustments shall automatically apply from and after the effective date of each Other SNG Contract entered into by Seller with a qualified buyer:

(i) The quantities specified in **Sections 5.2A (Capital Component)** and **5.2B (O&M Component)** representing the initial unit charge per MMBtu for the relevant component shall be reduced based on the volume of SNG purchased by Buyer under this Agreement in proportion to the increased Annual Contract Quantity to reflect the volume of Incremental SNG Quantity contracted to be sold by Seller to additional buyers in each Contract Year pursuant to each additional Other SNG Contract entered into by Seller after the Execution Date.

(ii) The percentage specified in the definition of “Buyer’s Allocated Percentage” shall be reduced based on the volume of SNG purchased by Buyer under this Agreement in proportion to the increased Annual Contract Quantity to reflect the volume of Incremental SNG Quantity contracted to be sold by Seller to additional buyers in each Contract Year pursuant to each additional Other SNG Contract entered into by Seller after the Execution Date.

(e) Upon receipt of Seller’s notice to Buyer that Seller has entered into an Other SNG Contract with respect to all or any portion of the Incremental SNG Quantity or that Seller has entered into an Other SNG Contract with Peoples and/or North Shore with respect to the Re-Allocated SNG Quantities, the Parties shall enter into a written amendment to this Agreement to memorialize the adjustments required to be made pursuant to clauses (b) and (c) of this **Section 2.10 (Adjustment to Price and Buyer’s Allocated Percentage)**. The adjustments described in this **Section 2.10 (Adjustment to Price and Buyer’s Allocated Percentage)** shall apply until the projected Financial Closing Date (as such date is determined by Seller in its sole discretion).

2.11 **Prudence Protection.** Any costs incurred by Buyer to receive, deliver, manage, or otherwise accommodate purchases under this Agreement will be fully recoverable through a purchased gas adjustment clause rider mechanism in conjunction with an SNG brownfield facility rider mechanism.

ARTICLE III **COMMERCIAL PRODUCTION**

3.1 **Determination of Commercial Production Date.** Seller shall provide Buyer with at least sixty (60) days’ prior written notice of the proposed date of commencement of performance testing of the Plant and at least three (3) Business Days’ written notice prior to the conduct of the initial Production Test and each subsequent Production Test; and shall permit Buyer to be present and to monitor such tests; provided that Seller shall be entitled to notify Buyer of the commencement of any new Production Test within an existing Production Test without providing such three (3) Business Days’ prior written notice and provided, further that Buyer’s presence or monitoring of such Production Test shall not be a prerequisite to Seller’s ability to commence and conduct a Production Test. The Commercial Production Date shall be the first Gas Day of the second calendar month following the date of achievement of Satisfactory

Passage of the Production Test; provided, however, that if the achievement of Satisfactory Passage of the Production Test occurs during the months of September through February, the Commercial Production Date shall be the following April 1. Buyer shall have the right to purchase any available SNG that may be manufactured during this period of time at the lesser of (a) the Monthly Invoice Contract Price or (b) the Chicago City-gate Price. If Buyer declines to purchase SNG produced during the period prior to the Commercial Production Date, then Seller may sell such SNG to third parties at any price. SNG produced during the period prior to the Commercial Production Date shall not be considered to be Incremental Production and proceeds from any sale of SNG produced prior to the Commercial Production Date shall not be included in Incremental Revenues.

3.2 Independent Engineer Certifications. The Independent Engineer shall certify the results of each Production Test conducted pursuant to **Section 3.1 (Determination of Commercial Production Date)**.

3.3 Notices by Seller and Buyer During Period Prior to the Commercial Production Date.

(a) Seller shall provide Buyer with timely written notices of the following events and information (including copies of all relevant documentation), specifying the subject matter thereof in reasonable detail:

(i) the date on which the ICC Order has become final and non-appealable or all appeals (if any) of the ICC Order have concluded, which notice shall be delivered no later than three (3) Business Days after such date;

(ii) the date on which the Financial Closing Date has occurred, which notice shall be delivered no later than three (3) Business Days after such date;

(iii) the date on which the Construction Commencement Milestone is achieved, which notice shall be delivered no later than three (3) Business Days after such date;

(iv) the date on which the issuance of the Notice to Proceed is issued to the EPC Contractor by Seller, which notice shall be delivered no later than three (3) Business Days after such date;

(v) commencing twelve (12) months prior to the expected Commercial Production Date, written notice no later than the third (3rd) Business Day of every month of the date on which the Commercial Production Date is projected by Seller to occur (based on Seller's most recent projections as of each such notice);

(vi) the date of execution of any interconnect agreement with the Receiving Pipeline, which notice shall be delivered no later than five (5) Business Days after such date;

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(vii) the date of first production of SNG from any portion of the Plant, and whether such SNG is Conforming SNG, which notice shall be delivered no later than (3) Business Days after such date;

(viii) the date that is thirty (30) days prior to the projected start of the initial Production Test;

(ix) the date that is three (3) Business Days prior to the actual start of the initial Production Test;

(x) no later than one (1) Business Day after Seller's receipt of written certification from the Independent Engineer of the satisfactory completion of the Production Test, notice and copies of the results thereof;

(xi) not later than twenty-four (24) hours prior to Receiving Pipeline's nomination deadline, confirmation that the Commercial Production Date will occur as set forth in the notice delivered in accordance with **Section 3.3(a)(v) (Notices by Seller and Buyer During Period Prior to the Commercial Production Date)**.

(xii) any suspension or material curtailment of construction of the Project, which notice shall be delivered no later than five (5) Business Days after such suspension or curtailment; and

(xiii) any suspension of funding under the Financing, or an "Event of Default" (as defined in the definitive financing documents entered into in respect of the Financing), which notice shall be delivered no later than five (5) Business Days after such suspension.

(b) Buyer shall provide Seller with timely written notice of the date on which each material Governmental Approval for Buyer's performance of its obligations under this Agreement has been obtained, which notice shall be delivered no later than five (5) Business Days after such date.

3.4 Seller Milestone Dates. Seller shall be required to complete each Milestone by the applicable Outside Completion Date (provided that the Commercial Production Date Milestone described below shall be extended on a day for day basis for each day after January 9, 2012 that the final and non-appealable ICC Order is delayed beyond such date):

Milestone	Outside Completion Date
Construction Commencement	July 1, 2015
Issuance of the Notice to Proceed	July 1, 2019
Commercial Production Date	July 1, 2022

ARTICLE IV
OPERATION AND MAINTENANCE

4.1 Quality. Seller shall, consistent with Good Industry Practice, at its cost and using such methods and means in its sole discretion, manufacture, compress, dehydrate, process, treat or condition the SNG so that it is Conforming SNG (collectively, the “Output Quality Requirements”).

4.2 Delivery Point. Seller shall deliver to Buyer the Conforming SNG at the Title Transfer Point. No delivery shall be deemed made, and no payment therefor shall be owing, if the SNG is not accepted by the Receiving Pipeline or is not delivered to the Title Transfer Point.

4.3 Plant Design and Maintenance.

(a) Seller agrees that the EPC Contract shall require the construction of a Plant designed to produce at least 43.5 Bcf per Contract Year utilizing the components specified on **Schedule 4.3 (Major Equipment List)** consistent with Good Industry Practice. Seller shall use Commercially Reasonable Efforts to maintain the Plant in good and efficient working order at all times in accordance with Good Industry Practice (including training of employees, safety procedures, recordkeeping, scheduling maintenance and major maintenance expenditures) and in such manner that the Plant should be able at all times during the Term, be able to produce the amount of SNG contemplated to be delivered by Seller to Buyer under this Agreement (subject to **Section 2.2 (Manufacture, Delivery, Sale, and Acceptance)** and **Section 4.4 (Limitation on Delivery)**). Seller will apply for, obtain and maintain, at its cost, all necessary Governmental Approvals (and renewals of the same) required to operate the Plant and to sell and deliver Conforming SNG to Buyer; provided that Buyer will apply for, obtain and maintain, at its cost, all necessary Governmental Approvals (and renewals of the same), if any, required to accept the Buyer's Allocated Percentage of Conforming SNG from Seller. In addition, Seller shall use Commercially Reasonable Efforts to ensure that all operations and maintenance employees at the Plant will be trained and certified through a training program that is in accordance with Good Industry Practice and meets all federal, state and local certification requirements.

(b) At each Annual Meeting, Seller shall submit to Buyer the proposed timing of any scheduled maintenance to be performed with respect to the Plant in the upcoming Contract Year that would require Seller to suspend production of SNG. Seller shall obtain input from Buyer with respect to the proposed time schedule and shall reasonably cooperate with Buyer to establish a maintenance schedule reasonably satisfactory to the Buyer (taking into equal account the requirements of the other Purchasing Utilities).

(c) Seller shall use Commercially Reasonable Efforts to avoid scheduling any major maintenance during the months of November through March (excluding for the avoidance of doubt any maintenance required in accordance with Good Industry Practices).

4.4 Limitation on Delivery. Seller shall not be obligated to deliver Conforming SNG hereunder or to produce SNG at a rate or a quantity which in the opinion of Seller, acting as a reasonably prudent operator, is not consistent with Good Industry Practice; provided, that this

Section 4.4 (Limitation on Delivery) will not relieve Seller of its obligations to deliver the quantities of Conforming SNG required to be delivered pursuant to its day-ahead nominations in accordance with **Section 2.2(b) (Manufacture, Delivery, Sale and Acceptance)**.

4.5 **Annual Meeting.** At least one year prior to the expected Commercial Production Date, the Parties and the other Purchasing Utilities shall establish the Coordination Committee which will meet to discuss, coordinate and endeavor to agree to relevant issues and decisions under this Agreement, including those identified in (b) below, and such other matters as the Parties and the other Purchasing Utilities deem appropriate. The Coordination Committee shall endeavor to agree upon such relevant issues and determine such decisions at least six (6) months prior to the expected Commercial Production Date.

(a) Each Party shall have the right to have other representatives and employees present at any meeting of the Coordination Committee to discuss issues and matters requiring input from the Coordination Committee. Any individual appointed as a representative of a Party to the Coordination Committee may be removed and a replacement thereof appointed by such Party at any time and from time to time upon written notice to the other Party. The Trustee will also be included in any meetings of the Coordination Committee to the extent necessary to discuss and resolve relevant issues impacting the Accounting and Depositary Services Agreement. The IPA will also be included in any meetings of the Coordination Committee to the extent necessary to discuss and resolve relevant issues impacting feedstock procurement.

(b) The Coordination Committee shall meet from time to time but no more than one (1) time per quarter of each Contract Year upon fourteen (14) days' prior written notice by Seller or Buyer (or by any other Purchasing Utility) at the Plant or a mutually acceptable location. In April of each year during the Term, after the information in respect of the immediately ended Contract Year is available to the Parties and the other Purchasing Utilities, the Coordination Committee shall meet (an "**Annual Meeting**") to discuss, among other things, but not limited to, (i) the forecast of projected Net Incremental Revenues for the following Contract Year, (ii) the current balance in the Cumulative Real Contract Savings Tracking Account, (iii) day-to-day communications, (iv) the scheduling of meetings, (v) any proposed changes to the Scheduling and Nominating Protocol, (vi) reporting requirements, (vii) the past and future operational reliability of the Plant, and (viii) the timing of scheduled maintenance for the upcoming Contract Year in accordance with **Section 4.3 (Plant Design and Maintenance)**. The Coordination Committee shall not have any authority to make any binding decisions affecting the Parties except for those decisions described in the foregoing clauses (iv), (v) and (vii) to the extent unanimously agreed to by the members of the Coordination Committee. In all other cases, the discussions and recommendations of the Coordination Committee are non-binding and shall serve as informational only provided to the Parties for their consideration. Pending a recommendation as to any dispute on matters before the Coordination Committee, Buyer acknowledges and agrees that nothing in the foregoing shall limit or affect Seller's obligation to operate the Plant in accordance with Good Industry Practice and Seller's right to take such actions as it deems reasonably necessary to avoid the loss of life or damage to the Plant. Meetings of the Coordination Committee (other than the Annual Meeting to be held in April which shall be conducted in person) may be conducted in person or by conference telephone calls in which all participants can hear all other participants and be heard by them.

(c) Each Party acknowledges and agrees that in no event shall any unanimous decision made by the Coordination Committee constitute an amendment, supplement or modification of the terms and conditions of this Agreement unless such decision has been formalized in writing.

4.6 Feedstock Requirements and Procurement Plans.

(a) Seller's Feedstock Requirements Forecasts and Feedstock Procurement Plans. In connection with each Annual Meeting, Seller shall prepare a feedstock requirements forecast setting forth the feedstock requirement forecasts for the Plant, which shall cover a 5-year feedstock procurement planning period, or such other longer period that the IPA or the ICC may require pursuant to Section 1-78 of the IPA Act, and shall include daily data representing a high-load, low-load, and expected-load scenario for the load of Buyer (the "Feedstock Forecast"). No later than the first Business Day of each March preceding each Annual Meeting, Buyer shall provide Seller with all supporting data and assumptions required to enable Seller to complete the Feedstock Forecast for each of the three scenarios. In addition to the Feedstock Forecast, Seller shall prepare a proposed feedstock procurement plan covering the contents described in **Section 4.6(b) (Contents of the Annual Fuel Procurement Plan)** (the "Feedstock Procurement Plan"). At the Annual Meeting the Parties shall review and finalize the Feedstock Forecast and Feedstock Procurement Plan to enable Seller to submit the Feedstock Forecast and the Feedstock Procurement Plan to the IPA and the ICC by May 15 and June 15, respectively, of each year or as otherwise required by Section 1-78 of the IPA Act. Within fourteen (14) days following the end of the thirty (30)-day comment period provided for by the IPA in connection with its process for determining the ICC-Approved Feedstock Procurement Plan, Seller shall revise its Feedstock Procurement Plan as appropriate and submit such revised Feedstock Procurement Plan to the ICC for consideration, together with the proposed feedstock procurement plan filed by the IPA for ICC approval.

(b) Contents of the Annual Fuel Procurement Plan. Seller shall develop its proposed annual fuel procurement plan ("Annual Fuel Procurement Plan") in good faith, bearing in mind the objective of balancing (i) the need to manage volatility of the Fuel Component of the Base Contract Price and (ii) the operational limits and economics of operating and maintaining the Plant. The Feedstock Procurement Plan shall (A) identify Seller's proposed portfolio of feedstocks to be procured for the upcoming Contract Year consistent with the ICC-Approved Feedstock Procurement Plan, (B) include Seller's projection of feedstock usage and ratios, (C) specifically identify the wholesale feedstock products to be procured following plan approval, and (D) include the following components:

- (1) daily load analysis which includes a multi-year historical analysis of hourly loads, and known or projected changes to future loads;
- (2) determination of the fuel specifications required for the Plant, including (v) the coal and petroleum coke mix (which shall provide for a Coal Usage Amount of 50% of the total feedstock over the Term unless Seller has reasonably determined that it is necessary to use a higher ratio of petroleum coke to "deliver additional

consumer savings” in which case the Coal Usage Amount minimum can be reduced to 35% of the total feedstock over the Term), (w) the volume of each feedstock required, (x) quality standards for each feedstock, (y) delivery requirements, including cost implications, and (z) technical specifications of feedstock for the Plant; and

(3) a five (5)-year look ahead of planned fuel procurement.

(c) ICC Approval of the Annual Fuel Procurement Plan. Seller shall procure fuel as directed by the ICC pursuant to the applicable ICC-Approved Feedstock Procurement Plan, which shall include an ICC-Approved Annual Fuel Procurement Plan specific for the Plant based on the Annual Fuel Procurement Plan and Feedstock Forecast provided to the IPA and the ICC. If the ICC fails to approve a feedstock procurement plan pursuant to the IPA Act or fails to approve the results of a feedstock procurement event, then Seller shall purchase feedstock on a month-by-month basis on the spot market for any amounts of feedstock not previously contracted for pursuant to an applicable ICC-Approved Feedstock Procurement Plan and/or ICC-Approved Annual Fuel Procurement Plan. Any actual delivered and processed fuel costs incurred by Seller shall be recoverable by Seller under this Agreement.

(d) Fuel Procurement Contracts. The Parties shall cooperate as necessary with the IPA in connection with the IPA’s feedstock procurement process described in Section 1-78 of the IPA Act. In connection with such feedstock procurement process, the Parties acknowledge that while standard contract forms are to be developed in coordination with Seller, Buyer, the other Purchasing Utilities, the ICC and other interested parties, Seller is obligated under the Public Act to enter into binding feedstock supply agreements with the winning suppliers selected by the IPA based on the standard form contracts developed by the IPA and approved by the ICC. All costs incurred by the IPA in connection with the feedstock procurement process for which Seller must pay to the IPA pursuant to Section 1-78 of the IPA Act shall be included in the calculation of the Fuel Component.

4.7 Scheduling and Nominating Protocol. The Parties agree to meet no later than six (6) months prior to the projected Commercial Production Date to develop the Scheduling and Nominating Protocol consistent with this Agreement and the tariff and nomination and scheduling procedures of the Receiving Pipeline for use between Seller and Buyer with respect to the following items: gas delivery schedules, nomination procedures, changes to scheduled maintenance, and unscheduled maintenance; provided that the Parties agree that the Scheduling and Nominating Protocol shall provide that Seller shall only nominate quantities of Conforming SNG (if any) on a daily basis. The Scheduling and Nomination Protocol shall provide that day-ahead nominations are to be provided by 7:00 AM on the Business Day preceding the Gas Day to which the nomination applies. The Parties’ agreement on the Scheduling and Nominating Protocol shall be documented in writing, signed by both Parties, and appended to this Agreement as an amendment. If the notice requirements of the Receiving Pipeline change, the Parties shall amend the Scheduling and Nominating Protocol accordingly. If the Parties fail to agree on a Scheduling and Nominating Protocol, the nominating protocol of the Receiving Pipeline with respect to any disputed provisions relating to deadlines and administrative matters shall govern

and shall constitute those governing provisions of the Nominating and Scheduling Protocol. If there are any disputed provisions of the Nominating and Scheduling Protocol which are not covered by the Receiving Pipeline's nominating protocol, then the Parties will submit the disputed provisions to the dispute resolution provisions set forth in **Article X (Dispute Resolution)**. Any penalty either Party incurs to a third party as a result of a breach of the Scheduling and Nominating Protocol shall be the responsibility and obligation of the Party that caused the breach and shall not be included in the determination of the Base Contract Price.

4.8 Transportation Contracts and Marketing Agreements. Within ninety (90) days after the date on which Seller has executed this Agreement pursuant to **Section 14.2 (Acceptance Deadline)**, the Parties shall mutually agree upon the delivery point for the Conforming SNG (the "Title Transfer Point"), which shall be at the designated point of interconnection between the Plant and the mainline system Receiving Pipeline. Prior to the CPD, to the extent necessary to effect delivery to the Title Transfer Point, Seller shall enter into an agreement for firm transportation capacity.

4.9 Operational Balancing. Seller shall enter into an operational balancing agreement or such other balancing arrangements with the Receiving Pipeline prior to the Commercial Production Date. Buyer shall have the right to review and comment on the operational balancing agreement or other balancing arrangements prior to execution by Seller. Buyer shall be liable for any payments and balancing penalties assessed against Seller by the Receiving Pipeline or otherwise payable by Seller pursuant to its gas transportation agreements if and when Buyer fails to take delivery of any Conforming SNG that has been nominated for delivery to Buyer by Seller in accordance with the Scheduling and Nominating Protocol. All such imbalance payments and penalties incurred by Seller with respect to imbalances resulting from Buyer's failure to take deliveries of Conforming SNG that has been nominated to Buyer shall be added to the O&M Component of the Base Contract Price in the month incurred. Seller shall be liable for any payments and balancing penalties assessed against Buyer by the Receiving Pipeline or otherwise payable by Buyer, if any, with respect to imbalances resulting from Seller's failure to deliver Conforming SNG in the quantities nominated. Seller shall also be liable for all other such payments and penalties assessed in connection with the imbalances resulting from or associated with the nomination of any Incremental Production. Seller shall use Commercially Reasonable Efforts to eliminate and/or mitigate imbalances with the Receiving Pipeline.

4.10 Buyer's Right to Inspect Plant. At no cost to Seller, and with not less than one Business Day's prior written notice, Buyer may engage the Inspector to inspect the Plant (and the records maintained and procedures followed in accordance with **Section 4.12 (Operating Records and Procedures Manuals)**) during normal business hours no more than once every two (2) years, except Buyer shall have the right to inspect at its option if (i) the Plant is shut down for four (4) consecutive weeks other than for scheduled maintenance or (ii) Seller fails to deliver at least fifty percent (50%) of the MCQ during three (3) consecutive months; provided that Buyer's right to inspect the Plant shall be limited to such activities reasonably necessary to ensure Seller's compliance with its obligation to operate and maintain the Plant in accordance with Good Industry Practices and shall be subject to the Inspector's compliance with Seller's site safety and security regulations. In the event that the Inspector reasonably determines that Seller has failed to operate and maintain the Plant in accordance with Good Industry Practices, Seller

shall implement the undisputed recommendations of the Inspector and any disputes concerning the need to implement recommendations made by the Inspector shall be resolved in accordance with **Section 10.4 (Arbitration)**. Notwithstanding the foregoing, Buyer shall not have the right to dictate the operational and maintenance obligations undertaken by Seller in the ordinary course of business.

4.11 SNG Title Transfer Point Data. Seller shall provide to Buyer, within five (5) Business Days of receipt of Buyer's request and during each inspection described in **Section 4.10 (Buyer's Right to Inspect Plant)**, detailed reports of Seller's data relating to the amount and quality of SNG delivered, and all related supporting documentation, including all information required to understand the basis for determining the amount of SNG delivered from the Plant to address related commercial and technical requirements and any adjustments or reconciliation of this data with other parties engaged in the sale of SNG from the Plant.

4.12 Operating Records and Procedures Manuals.

(a) Seller shall prepare and maintain daily operating logs, records and reports documenting the operation and maintenance of the Plant consistent with Good Industry Practices and the Financing. Such operating data shall include meter and gauge readings, maintenance records, inspection reports, spare parts inventories and fuel records and information known to Seller regarding the Plant's availability, outages, circuit breaker trip operations requiring a manual reset, and any other significant events related to the operation and maintenance of the Plant. Seller shall also prepare reports and data which are related to the maintenance of any hazardous materials on the Plant site in a manner complying with Applicable Laws and shall maintain as-built drawings and update specifications, lists and other documents provided to Seller by the EPC Contractor in the manner provided in this Section. To the extent consistent with Good Industry Practice, Seller shall keep accurate records of any accident or other occurrence at the Plant site that results in injury to persons or damage to property. Seller shall implement a Plant Cost Accounting System which collects actual expenditures and support reporting of expenditures as required in other parts of this Agreement.

(b) Seller shall retain and preserve all records, reports, documents and data collected or created in accordance with (a) above; provided that in the case of any routine operating records, Seller shall only be obligated to retain same for a period of three (3) years from the end of the Contract Year in which such operating records were created.

(c) Seller shall maintain Plant operations and maintenance procedures manuals and plans consistent with Good Industry Practice, which shall include administrative procedures, environmental, health and safety procedures, start-up procedures, a quality plan, personnel and training records, recommended spare parts manual, and documentation provided by technology and equipment suppliers. The operation and maintenance procedures manual shall include, but shall not be limited to: (i) operating instructions and procedures, (ii) maintenance instructions and procedures, (iii) organization and reporting procedures, (iv) correspondence and review procedures, (v) procurement and contracting procedures, (vi) accounting, bookkeeping and recordkeeping systems, (vii) personnel policies for Seller's activities at the Plant site, (viii) laboratory procedures, (ix) safety procedures and instructions, (x) administration procedures, (xi)

incident reporting procedures, (xii) security procedures and instructions, (xiii) performance testing procedures, (xiv) community response plan, (xv) emergency response plan, (xvi) environmental management plan, including spill prevention and waste disposal plan; (xvii) staffing plan and organization, including qualification and training requirements; (xviii) risk management plan and risk register; and (xix) reporting plan, including plans to produce monthly and annual technical and financial reports to be issued to Buyer.

(d) Seller shall prepare and maintain an annual Plant Operations and Maintenance Plan consistent with Good Industry Practice. The Plant Operations and Maintenance Plan shall include, but shall not be limited to: (i) detailed operating maintenance budgets, (ii) spare parts utilization and replenishment, (iii) training plans, (iv) maintenance and outage planning including routine inspections, repairs and replacements, (v) plans for securing technology support from suppliers and consultants and (vi) procurement plan for equipment, materials and outside services.

4.13 Unscheduled Maintenance. Seller shall use Commercially Reasonable Efforts to provide Buyer with (a) as much advance notice as reasonably practicable and no less than three (3) days' prior written notice (unless such advance notice is not feasible and a shorter advance notice is dictated by the circumstances), of unscheduled maintenance, and (b) information, to the extent feasible and known to Seller, regarding the schedule, duration and effect on the production of Conforming SNG during the periods of such unscheduled maintenance.

ARTICLE V

PRICE

5.1 Contract Price. Commencing as of the Commercial Production Date and continuing during the Term, for each month of production of Conforming SNG, Buyer agrees to pay Seller an amount equal to the product of (i) the Monthly Invoice Contract Price, times (ii) the total MMBtus of Conforming SNG delivered to the Title Transfer Point for Buyer's account up to the Buyer's Allocated Percentage of Applicable MCQ as provided in this Agreement, up to the Buyer's Allocated Percentage of the ACQ on an annual basis. For the avoidance of doubt, Buyer is responsible to pay only for Conforming SNG that it purchases or is obligated to purchase. Subject to **Article XIII (Force Majeure)**, Buyer's failure to comply with the foregoing obligation will result in liability to Seller as described in **Section 12.5 (Cover Damages)**.

5.2 Determination of Base Contract Price. The Base Contract Price shall be a price per MMBtu established on or as of the Commercial Production Date using a five-component formula comprised of each of the Capital Component, O&M Component, Fuel Component, Carbon Capture and Sequestration Component and Transportation and Marketing Component as further described below, and the Base Contract Price shall be adjusted in any month for any changes to any of the components (except the Capital Component) in such month:

$$\text{Base Contract Price} = A + B + C + D + E$$

Where:

“A” is the Capital Component. The Capital Component is fixed at \$[X.XX] per MMBtu in nominal dollars. The Capital Component has been approved by the ICC as contemplated in the Public Act on the basis of calculations that, among other things, exclude the CPR Commitment Amount as a capital cost of Seller for purposes of determining the Capital Component. For purposes of determining the Capital Component, the Annual Contract Quantity will be 43.5 Bcf. The Capital Component will be adjusted (i) on the Financial Closing Date to reflect the actual cost of debt in accordance with the adjustment formula set forth in **Schedule 5.2A (Formula for the Adjustment of the Capital Recovery Charge)** and (ii) adjustment in accordance with **Section 2.10 (Adjustment to Price and Buyer’s Allocated Percentage)** (if applicable). Within five (5) Business Days of the Financial Closing Date, Seller shall provide Buyer with the amount of the adjusted Capital Component and, absent error in Seller’s computation, this Agreement shall be deemed to be automatically amended to reflect such adjusted Capital Component.

“B” is the O&M Component. The O&M Component shall initially be \$2.00 per MMBtu in 2011 dollars and will be subject to (i) adjustment in accordance with **Section 2.10 (Adjustment to Price and Buyer’s Allocated Percentage)** (if applicable) and (ii) annual adjustment as set forth below. For purposes of determining the O&M Component, the Annual Contract Quantity will be 43.5 Bcf. The annual adjustment will occur irrespective of the actual O&M Expenses incurred or recovered by Seller in any Contract Year, commencing on the first day of such Contract Year based solely on the changes in the O&M Indices for the previous Contract Year. The fees and expenses of the Independent Engineer shall not be included in the O&M Component of the Base Contract Price. The O&M Component shall be adjusted annually based on the basket of indices set forth below if such basket of indices are approved by the Capital Development Board or by such other index or basket of indices as are approved by the Capital Development Board:

O&M Indices		
Category	% of O&M	Indices
Labor	40%	Employment Cost Index (Midwest)
Catalyst	8%	Producer Price Index WPU 102504 – Nickel Alloy Mill Shapes
Chemicals & Lubricants	12%	Producer Price Index WPU 061 – Industrial Chemicals
Maintenance Materials	15%	Producer Price Index WPU 101506 – Stainless Steel, Carbon, Alloy
Materials & Misc.	10%	Producer Price Index WPU 1149 – Miscellaneous General

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		Purpose Equipment
Refractory	15%	Producer Price Index WPU 1353 – Refractory, non-clay
	100%	

“C” is the Fuel Component. The Fuel Component for each month shall be a price per MMBtu established based on the quotient of (i) the actual fuel costs incurred by Seller in accordance with the ICC-Approved Annual Fuel Procurement Plan for the Plant as described in **Section 4.6 (Feedstock Requirements and Procurement Plans)** during each month and (ii) the Btu content for each such month in accordance with the formula below:

(\$/MMBtu delivered fuel cost)

The Fuel Component shall be determined on a monthly basis pursuant to **Schedule 5.2C (Calculation of the Fuel Component)**.

“D” is the Carbon Capture and Sequestration Component. The Carbon Capture and Sequestration Component for each month shall be a price per MMBtu established under the formula for determining the Carbon Capture and Sequestration Component that will be developed as part of the ICC’s approval of Seller’s carbon capture and sequestration plan pursuant to the Public Act and the approved formula will be set forth in **Schedule 5.2D (Calculation of Carbon Capture and Sequestration Component)** to be attached to this Agreement that will be automatically appended upon such approval.

“E” is the Transportation and Marketing Component. The Transportation and Marketing Component for each month shall be the actual cost of interstate and intrastate transportation (expressed on a \$/MMBtu basis) incurred by Seller for such month for SNG produced from the Plant and delivered under firm transportation agreements entered into pursuant to **Section 4.8 (Transportation Contracts and Marketing Arrangements)** (including all applicable capacity charges, pipeline commodity transportation costs and associated fuel costs) (collectively, the “Transportation and Marketing Component”) or all applicable fees and charges incurred by Seller for such month under gas marketing agreements entered into by Seller pursuant to **Section 4.8 (Transportation Contracts and Marketing Arrangements)** for the delivery of Conforming SNG under this Agreement and the Other SNG Contracts.

5.3 Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements.

(a) **Adjustments for Payment of New Taxes.** All New Taxes applicable to and imposed upon Seller shall be included in the calculation of the Adjusted Base Contract Price; provided, however, that any adjustment of the Base Contract Price for New Taxes shall be net of any offsetting Tax benefits resulting from New Taxes. As soon as reasonably possible after Seller is aware of any New Taxes, Seller will notify Buyer in writing of such New Taxes, as well

as an estimate of the economic effects of such New Taxes. Buyer shall be responsible for Buyer's Allocated Percentage of all New Taxes, regardless of whether assessed before or after the Title Transfer Point, including, but not limited to, Buyer's Allocated Percentage of all sales, use or excise taxes; provided that, payment for Buyer's Allocated Percentage of all New Taxes or Buyer's Allocated Percentage of all New Taxes that Seller is required to remit or pay shall be satisfied solely through an increase in the Base Contract Price which shall be adjusted on a \$/MMBtu basis to reflect the required payment of such New Taxes commencing in the month in which such New Taxes are assessed. If Buyer is entitled to purchase Conforming SNG free from any such New Taxes, Buyer shall furnish Seller with copies of the necessary exemption or resale certificate if and to the extent that the law provides for the issuance of exemption or resale certificates. Seller and Buyer shall utilize Commercially Reasonable Efforts to minimize any New Taxes. Any refunds received by Seller of New Taxes previously paid by Buyer either directly or through an adjustment to the Base Contract Price shall be passed-through to Buyer as an adjustment to the Base Contract Price.

(b) Adjustments for Change in Governmental Requirements. If at any time there is a Change in Governmental Requirements that has a material effect on the cost (whether determined on an overall \$/MMBtu or other basis) to Seller of providing Conforming SNG to Buyer under this Agreement (whether by increasing or decreasing such cost, and whether such Change in Governmental Requirements directly imposes costs or imposes restrictions on operations that require increased expenditure or results in reduced output without a commensurate decrease in costs), Seller shall provide written notice to Buyer (i) that such a Change in Governmental Requirements has occurred at any time within thirty (30) days after Seller becomes aware of such Change in Governmental Requirements, and (ii) of the detailed cost impact (whether increasing or decreasing) as soon as Seller determines such cost impact, which shall in no event be more than one hundred eighty (180) days after Seller becomes aware of such Change in Governmental Requirements. Seller shall adjust the Base Contract Price under this Agreement to account for Buyer's Allocated Percentage of the increased or decreased costs required to be incurred by Seller in connection with the production of Conforming SNG under this Agreement effective as of the effective date of the Change in Governmental Requirements. The adjustment to the Base Contract Price shall include an aggregate return to Seller on any additional capital employed by Seller equal to the return on the Capital Component in accordance with the Public Act; provided that the value of any tax benefit actually received shall be taken into account in determining the effects of any Change in Governmental Requirements. The adjustments to the Base Contract Price required under this **Section 5.3(b)** (**Adjustments for Change in Governmental Requirements**) shall be calculated on an "open book" basis. The Independent Engineer shall determine the economic effect of each such Change in Governmental Requirements, and the appropriate adjustments to the Base Contract Price that the Independent Engineer has in good faith determined to be necessary to reflect the cost impact resulting from such Change in Governmental Requirements and the value of any associated tax benefits. If compliance with the Change in Governmental Requirements can be accomplished through the payment of a Tax or some other action by Seller, then in that circumstance Seller shall conduct a cost-benefit analysis of paying the Tax versus the other action, which may include modifications to the Plant, and Seller shall choose the option that minimizes any increase in the Adjusted Base Contract Price.

(c) Seller shall provide the Trustee with information regarding the required adjustments to the Base Contract Price and its affected constituent components, as applicable, in accordance with the timing contemplated in **Schedule 9.7 (Monthly Reconciliation Process)**.

5.4 Allocation of Net Incremental Revenue.

(a) On a monthly basis, all Net Incremental Revenues, if any, will be allocated equally between Seller and the Consumer Protection Reserve Account. Seller shall provide the Trustee with information regarding the Net Incremental Revenues in accordance with the timing contemplated in **Schedule 9.7 (Monthly Reconciliation Process)**.

5.5 Adjustments for Consumer Protection Reserve Account.

(a) Each month, the Trustee shall calculate:

- (i) the Monthly Invoice Contract Price;
- (ii) the difference between the Monthly Invoice Contract Price and the Monthly Weighted Average Chicago City-gate Price;
- (iii) the Monthly Base Overage Amount, the Monthly Inflation-Adjusted Base Overage Amount, as well as the Overage Amount; and
- (iv) the Buyer's Allocated Percentage of the Overage Amount.

(b) The Savings Tracking Amount will be credited or debited on a monthly basis to the CRCSTA in real 2010 dollars, with the adjustment factors for converting nominal Savings Tracking Amount amounts to real amounts based on the GDP Deflator.

(c) Each month during the first twenty-four (24) months following the CPD,

(i) to the extent there is an Overage Amount, the funds in the Consumer Protection Reserve Account shall be distributed to Seller to provide a credit to Buyer in the form of a reduction to the current month's Adjusted Base Contract Price by an amount equal to the Buyer's Allocated Percentage of the Overage Amount; provided, that if there are no funds in the Consumer Protection Reserve Account, there will be no credit to the Adjusted Base Contract Price; and

(ii) to the extent there is no Overage Amount and the Adjusted Base Contract Price is greater than or equal to the Monthly Weighted Average Chicago City-gate Price, no funds shall be distributed from the Consumer Protection Reserve Account, and there will be no credit to the Adjusted Base Contract Price; and

(iii) to the extent that there is no Overage Amount and the Adjusted Base Contract Price is less than or equal to the Monthly Weighted Average Chicago City-gate Price, there will be no credit to the Adjusted Base Contract Price. Buyer shall (A) remit to Seller the product of the Buyer's Allocated Percentage of the MDQ multiplied by the Adjusted Base

Contract Price, and (B) remit to the Trustee for deposit into the Consumer Protection Reserve Account the product of the Buyer's Allocated Percentage of the MDQ multiplied by the difference between the Monthly Weighted Average Chicago City-gate Price and the Adjusted Base Contract Price (the "Positive Market Differential").

(d) Each month after the first twenty-four (24) months following the CPD, when the balance in the CRCSTA is less than zero as of the start of any month:

(i) to the extent the Adjusted Base Contract Price is less than or equal to the Monthly Weighted Average Chicago City-gate Price, there will be no credit to the Adjusted Base Contract Price. Buyer shall (A) remit to Seller the product of the Buyer's Allocated Percentage of the MDQ multiplied by the Adjusted Base Contract Price, as such Adjusted Base Contract Price shall be adjusted for the credits described in clause (d)(ii)(B), (iii) and (iv) below, and (B) remit funds to the Trustee for deposit into the Consumer Protection Reserve Account the Positive Market Differential;

(ii) (A) 50% of any funds held in Consumer Protection Reserve Account in excess of the CPR Principal Maximum Amount shall be distributed to Seller, until Seller has received over the Term a total of \$150 million under this subparagraph and subparagraph (e)(ii) below, and (B) 50% of any funds held in Consumer Protection Reserve Account in excess of the CPR Principal Maximum Amount shall be distributed to Seller to provide a credit to Buyer, based on Buyer's Allocated Percentage, which shall be credited against the Adjusted Base Contract Price;

(iii) to the extent there is an Overage Amount and the Buyer's Allocated Percentage of the Overage Amount exceeds the amount credited to Buyer pursuant to subparagraph (d)(ii), the Consumer Protection Reserve Account funds shall be distributed to Seller to provide a credit to Buyer to reduce the current month's Adjusted Base Contract Price by an amount equal to the difference of the Buyer's Allocated Percentage of the Overage Amount and the amount credited to Buyer pursuant to subparagraph (d)(ii), to the extent there are funds in the Consumer Protection Reserve Account;

(iv) to the extent there is no Overage Amount and the Adjusted Base Contract Price is greater than or equal to the Monthly Weighted Average Chicago City-gate Price, no funds shall be distributed from the Consumer Protection Reserve Account, and there will be no credit to the Adjusted Base Contract Price; and

(v) after distributing amounts pursuant to subparagraphs (d)(ii) and (d)(iii), 100% of any additional amounts held in the Consumer Protection Reserve Account in excess of the CPR Principal Maximum Amount shall be distributed to Seller to provide a credit to Buyer, based on Buyer's Allocated Percentage, which shall be credited against the current month's Adjusted Base Contract Price.

(e) Each month after the first twenty-four months (24) following the CPD, when the balance in the CRCSTA is equal to or greater than zero as of the start of any month:

(i) to the extent that there is no Overage Amount and the Adjusted Base Contract Price is less than or equal to the Monthly Weighted Average Chicago City-gate Price, there will be no credit to the Adjusted Base Contract Price. Buyer shall (A) remit to Seller the product of the Buyer's Allocated Percentage of the MDQ multiplied by the Adjusted Base Contract Price, and (B) remit to the Trustee for deposit into the Consumer Protection Reserve Account the Positive Market Differential;

(ii) prior to application of the credit in clause (iii) below, 100% of any funds held in Consumer Protection Reserve Account in excess of CPR Principal Maximum Amount shall be distributed to Seller, until Seller has received over the Term a total of \$150 million under this subparagraph and subparagraph (d)(ii) above;

(iii) to the extent there is an Overage Amount, the Consumer Protection Reserve Account funds shall be distributed to Seller to provide a credit to Buyer in the form of a reduction to the current month's Adjusted Base Contract Price by an amount equal to the Buyer's Allocated Percentage of the Overage Amount, to the extent there are funds in the Consumer Protection Reserve Account; and

(iv) to the extent there is no Overage Amount and the Adjusted Base Contract Price is greater than or equal to the Monthly Weighted Average Chicago City-gate Price, no funds shall be distributed from the Consumer Protection Reserve Account, and there will be no credit to the Adjusted Base Contract Price; and

(v) after distributing amounts pursuant to subparagraphs (e)(ii) and (e)(iii), 50% of any additional amounts held in Consumer Protection Reserve Account in excess of CPR Principal Maximum Amount shall be distributed to Seller; and the Buyer's Allocated Percentage of the remaining 50% of any additional amounts held in Consumer Protection Reserve Account in excess of CPR Principal Maximum Amount shall be distributed to Seller to provide a credit to Buyer in the form of a reduction to the current month's Adjusted Base Contract Price.

ARTICLE VI

COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER

6.1 Matters Regarding Public Act.

(a) Seller covenants that (i) any and all coal used by the Plant in the gasification process will be coal that has a high volatile bituminous rank and greater than 1.7 pounds of sulfur per million Btu content; (ii) coal and petroleum coke will be used as feedstocks by the Plant for the gasification process, with coal comprising at least 50% of the total feedstock over the Term unless Seller reasonably determines that it is necessary to use additional petroleum coke to deliver net consumer savings, in which case the Plant will use coal for at least 35% of the total feedstock over the Term; and (iii) feedstocks for the Plant will be procured in accordance with the requirements of Section 1-78 of the Illinois Power Act.

(b) Seller shall, prior to issuing a Notice to Proceed, (a) file with the ICC a certificate from an independent engineer that the Plant has obtained (i) all applicable State and federal environmental permits required for construction; (ii) approval from the ICC of a carbon capture and sequestration plan; and (iii) all necessary permits required for the construction for the transportation and sequestration of carbon dioxide as set forth in the carbon capture and sequestration plan approved by the ICC, and (b) establish the Consumer Protection Reserve Account in accordance with **Section 12.7 (Consumer Protection Reserve Account)**.

6.2 Insurance.

(a) During the Term, Seller will obtain and maintain insurance meeting the requirements set forth in **Schedule 6.2(a) (Insurance Requirements)**, and identifying Buyer, its Affiliates and their respective officers, directors, employees and agents as named insured on a primary and noncontributory basis (with the exception of workers compensation and property insurance). Seller shall deliver to Buyer certificates evidencing such insurance prior to the time such insurance is required and renewal certificates of any such insurance policy. Seller shall use commercially reasonable effort to deliver to Buyer notice of any cancellation, non-renewal, modification or reduction of coverages or limits with respect to such insurance, including cancellation for non-payment of premiums. Seller shall be solely responsible for any claims falling within its deductibles under its insurance policies. Such insurance policies shall provide a waiver of subrogation in favor of Buyer.

(b) Seller also shall either obtain and maintain, or require those under contract with Seller to provide design services, construction management services, and/or construction work for the construction of the Plant (collectively, "**Plant Construction Participants**"), to procure and maintain the minimum coverages and limits set forth in **Schedule 6.2(b) (Insurance Requirements for Construction Participants)**. Seller shall deliver to Buyer copies of certificates evidencing such insurance prior to the time any such Plant Construction Participant is permitted on the Plant site and copies of renewal certificates of any such insurance policy as they are available from time to time.

(c) Commercial general liability insurance limits and deductibles subject in all cases to the requirement that such limits and deductibles must be commercially available in the insurance market. Seller will place all insurance with reputable and creditworthy companies, having an AM Best financial strength rating of A- or better, and will document such insurance with certificates of insurance. Notwithstanding anything to the contrary in the foregoing, the insurance coverage obligations of Seller in this **Section 6.2 (Insurance)** shall be no more onerous than the insurance coverage obligation of Seller under the Financing, so long as such obligations require Seller to maintain insurance with a policy limit in an amount equal to the replacement value of the Plant or at least sufficient to cover the Maximum Foreseeable Loss scenario as calculated by a qualified loss control engineering firm, subject in all cases to the requirements that such limits and deductibles are commercially available in the insurance market. Seller shall annually certify in writing to Buyer its compliance with this Section and, simultaneously with such certification, deliver to Buyer insurance certificates issued by Seller's insurance broker evidencing all insurance coverage maintained by Seller.

(d) If during the Term the Plant suffers a casualty event or series of casualty events that results in Seller not being able to produce and deliver Conforming SNG sufficient to meet the MCQ in effect immediately prior to such event(s) and such condition persists for more than ninety (90) days, Seller shall notify Buyer no later than one hundred eighty (180) days following such casualty event(s) whether Seller intends to restore the Plant such that it will again be capable of delivering Conforming SNG to Buyer sufficient to meet the MCQ in effect immediately prior to the casualty event(s). If Seller elects to restore the Plant, Seller will provide Buyer with good faith estimates of the repair schedule and Seller shall use Commercially Reasonable Efforts to cause such repairs to be completed within the schedule provided. If Seller elects not to restore the Plant as set forth in the preceding sentence, then any insurance proceeds will be used (i) first, to repay all outstanding senior secured debt amounts, if any, owing to the Financing Parties in respect of the Financing (including all prepayment costs, breakage costs, etc.), (ii) then to repay the amount of any Contract Savings Guaranty Shortfall Amount. Any amounts remaining after making the foregoing transfers shall revert to Seller.

6.3 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer on the Execution Date that, except as otherwise disclosed in writing to Buyer on or prior to the Execution Date:

(a) It is a limited liability company (i) duly organized, (ii) validly existing, (iii) in good standing under the laws of its jurisdiction of organization, and (iv) where applicable, in good standing as a foreign entity in all jurisdictions where the nature of its properties or business so requires.

(b) It has the power and authority (i) to own its respective properties and carry on its respective business as now being conducted and as intended to be conducted, and (ii) to execute, deliver and perform, as applicable, its obligations under this Agreement and any other documents contemplated hereby to which it is or will be a party.

(c) The execution, delivery and performance of this Agreement and the other documents contemplated hereby (i) have been duly authorized by all necessary corporate action (or similar action) on its part, (ii) will not constitute a violation of any provision of Applicable Law in any material respect or any order of any Governmental Authority applicable to it, or any of its properties or assets in any material respect, (iii) will not violate any provision of its organizational documents, (iv) will not violate any provision of any indenture, agreement, bond, note or other similar instrument to which it is a party or by which it or any of its properties or assets are bound, (v) will not be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or create any right to terminate, any such indenture, agreement, bond, note or other similar instrument, and (vi) to the best of its Knowledge, will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its properties or assets other than pursuant to this Agreement or any Financing.

(d) All Governmental Approvals (other than the Governmental Approvals to be obtained after the date hereof with respect to the construction and operation of the Plant) required for the consummation or the execution, delivery and performance by it of this

Agreement have been duly obtained or made or duly applied for, and are in full force and effect, and if any further authorizations, approvals, registrations or filings should hereafter become necessary, it reasonably expects to obtain or make all such authorizations, approvals, registrations or filings.

(e) This Agreement when executed, will constitute its legal, valid and binding obligations, enforceable against it in accordance with its terms, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(f) There are no actions, suits or other proceedings at law or in equity by or before any arbitrator, arbitration panel or Governmental Authority (including, but not limited to, matters relating to environmental liability) or, to the best of its Knowledge, any investigation by any Governmental Authority of its affairs, or threatened action, suit or other proceeding against or affecting, it or its properties or rights, which in either case, if adversely determined could have a material adverse effect on its ability to perform its obligations under this Agreement.

(g) It has dealt with no broker or finder who is entitled to a commission or other compensation in connection herewith, which in either case, if adversely determined could have a material adverse effect on its ability to perform its obligations under this Agreement.

6.4 Permitted Indebtedness/Permitted Liens. Seller agrees that it shall not (a) incur any secured indebtedness other than the Financing and Permitted Indebtedness nor (b) grant any additional liens or encumbrances over the Plant that would have priority over the liens in favor of the Financing Parties or liens granted in favor of Buyer and the other Purchasing Utilities pursuant to this Agreement and the Other SNG Contracts other than Permitted Liens.

6.5 Tax Minimization. Seller agrees to work together with Buyer, the other Purchasing Utilities and the Trustee to take commercially reasonable steps to minimize the tax impact on the transactions involving the Consumer Protection Reserve Account contemplated in this Agreement, while preserving the consumer benefits.

6.6 Refinancing Limitations. Seller shall not refinance the Financing without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed if such refinancing does not increase the amount of debt then outstanding or extend the original maturity date of the Financing; provided that Buyer's consent shall not be required for: (a) the Financing Parties and Seller to restructure the Financing in connection with any restructuring required to forestall a material breach under the Financing, including in connection with such restructuring, to extend the original maturity date of the Financing or to increase the principal thereof by an amount equal to capitalized or paid-in-kind interest, or (b) Seller to implement a leveraged lease transaction, partnership flip structure or other similar tax oriented structured financing transaction, as long as such leveraged lease transaction, partnership flip structure or other similar tax oriented structured financing transaction, as the case may be, does not extend the original maturity date and/or term of the Financing or increase the amount thereof outstanding at the time of such transaction.

6.7 Compliance with Laws. Seller agrees to comply with all federal, state, and local laws, rules, and regulations applicable to Seller in operating the Plant and fulfilling its obligation pursuant to this Agreement.

6.8 MBE/WBE Requirements. Seller shall comply with the requirements of the Public Act to make a good faith effort to ensure that an amount equal to not less than 15% of the value of the EPC Contract shall be established as a goal to be awarded to minority owned businesses, female owned businesses, and businesses owned by a person with a disability; provided that at least 75% of the amount of such total goal shall be for minority owned businesses. "Minority owned business", "female owned business", and "business owned by a person with a disability" shall have the meanings ascribed to them in Section 2 of the Business Enterprise for Minorities, Females and Persons with Disabilities Act.

6.9 Information. Seller shall, as soon as reasonably practicable after they become available, deliver to Buyer any updates and/or material changes to the documents, reports and information provided to Buyer and/or Buyer's advisors as described in **Section 6.3 (Representations and Warranties of Seller)** during the period from the Execution Date through the Financial Closing Date.

ARTICLE VII

COVENANTS, REPRESENTATIONS AND WARRANTIES OF BUYER

7.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller on the Execution Date that, except as otherwise disclosed in writing to Seller on or prior to the Execution Date:

(a) It is a public utility under Illinois law (i) duly organized, (ii) validly existing and (iii) in good standing under the laws of Illinois.

(b) It has the corporate power and authority to execute, deliver and perform, as applicable, its obligations under this Agreement and any other documents contemplated hereby to which it is or will be a party.

(c) This Agreement when executed, will constitute its legal, valid and binding obligations, enforceable against it in accordance with its terms, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) To the Knowledge of Buyer, there is no litigation of any nature now pending or threatened, in any way relating to, affecting, or questioning either the execution or delivery of this Agreement or the transactions contemplated by this Agreement, or otherwise affecting or questioning the validity of this Agreement or the transactions contemplated by this Agreement; neither the corporate existence of Buyer nor the title of the undersigned officers to their respective offices is being contested; and no proceedings or authority relating to this

Agreement or the transactions contemplated by this Agreement have or has been repealed, rescinded, or revoked.

(e) All Governmental Approvals required for the consummation or the execution, delivery and performance by it of this Agreement have been duly obtained or made or duly applied for, and are in full force and effect, and if any further authorizations, approvals, registrations or filings should hereafter become necessary, it reasonably expects to obtain or make all such authorizations, approvals, registrations or filings.

(f) There are no actions, suits or other proceedings at law or in equity by or before any arbitrator, arbitration panel or Governmental Authority (including, but not limited to, matters relating to environmental liability) or, to the best of its Knowledge, any investigation by any Governmental Authority of its affairs, or threatened action, suit or other proceeding against or affecting, it or its properties or rights, which in either case, if adversely determined could have a material adverse effect on its ability to perform its obligations under this Agreement.

(g) It has dealt with no broker or finder who is entitled to a commission or other compensation in connection herewith, which in either case, if adversely determined could have a material adverse effect on its ability to perform its obligations under this Agreement.

7.2 Tax Minimization. Buyer agrees to work together with Seller, the other Purchasing Utilities and the Trustee to take commercially reasonable steps to minimize the tax impact on the transactions involving the Consumer Protection Reserve Account contemplated in this Agreement, while preserving the consumer benefits.

ARTICLE VIII

INTENTIONALLY OMITTED

ARTICLE IX

STATEMENTS AND PAYMENT

9.1 Monthly Invoice. On or before the date specified in **Schedule 9.7 (Monthly Reconciliation Process)**, Seller shall render (or provide Trustee with the information necessary for Trustee to render) to Buyer a statement showing the MDQ of Conforming SNG delivered by Seller to Buyer, the calculation of the Monthly Invoice Contract Price applicable to such Conforming SNG, showing separately each component and adjustment set forth in **Sections 5.2 (Determination of Base Contract Price)**, **5.3 (Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements)**, and **5.5 (Adjustments for Consumer Protection Reserve Account)** and an invoice for the amount due in a form mutually agreed upon by Buyer and Seller within one hundred and eighty (180) days after the Effective Date. Each monthly statement shall include metering data, as well as the calculation of the Adjustment for the Consumer Protection Reserve Account. Seller shall have the right to deliver each statement and invoice described in this **Section 9.1 (Monthly Invoice)** via electronic means to Buyer's addressee specified in **Section 14.13 (Notices)**; provided that, if Buyer specifies a

different address in accordance with **Section 14.13 (Notices)** Seller shall have a reasonable period of time to redirect such statements and invoices to such new addressee.

9.2 **Protest of Statement.** If either Party believes the metering data or the invoice to be incorrect or inaccurate, that Party may protest the amount of the invoice no later than ninety (90) days after the end of the Contract Year in respect of which month the applicable monthly invoice relates; provided that, nothing in this Section shall limit or restrict any audit rights Buyer has under this Agreement, including without limitation, as set forth in **Section 9.6 (Audits)**, or the right to make any adjustments as a result of any such audit.

9.3 **Payment Due Date.** On or before the tenth Business Day after Buyer receives Seller's invoice as provided in Schedule 9.1 (Monthly Invoice), Buyer shall wire transfer or direct deposit payment to Seller the amount due for the preceding month; provided, however, if there is a good faith dispute between the Parties regarding any payment due, Buyer shall pay the undisputed amount only and shall be obligated to pay any amounts determined pursuant to the dispute resolution provisions in **Article X (Dispute Resolution)** to have been underpaid together with interest at the rate set forth in **Section 9.5 (Interest on Past Due Amounts)**.

9.4 **Payment.** Unless otherwise provided for in this Agreement, all payments pursuant to this Agreement shall be made by wire transfer or direct deposit of immediately available funds for the payee's account in accordance with its written instructions.

9.5 **Interest on Past Due Amounts.** Interest on any unpaid portion of any amount due, which shall be defined as any monetary amount due by either Party for any reason under this Agreement (including, but not limited to liquidated damages, and whether on account of payments withheld or due to be refunded), shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the Prime Rate; or (ii) the maximum applicable lawful interest rate.

9.6 **Audits.** Upon at least five (5) Business Days' prior written notice to Seller, Buyer shall have the right to audit the books, records and accounts of Seller to the extent they relate to the Plant and Seller's sale of SNG hereunder and such audit is reasonably necessary to verify (a) the determination of the Base Contract Price and any of the adjustments made to the Base Contract Price in **Article V (Price)**, including the calculation of Net Incremental Revenues, (b) the calculation of the Adjustments for the Consumer Protection Reserve Account, (c) the determination of the Contract Savings Guaranty Shortfall Amount, (d) the amounts invoiced by Seller pursuant to **Section 9.1 (Monthly Invoice)** and (e) Seller's use of Commercially Reasonable Efforts under this Agreement; provided, that Buyer's audit rights in respect of each Contract Year shall be limited to a period not to exceed three (3) years from the end of the most immediately completed Contract Year. Notwithstanding the foregoing, in the event that as a result an audit of a particular Contract Year, Buyer determines that it is necessary to conduct an audit of any previous Contract Year with respect to one or more revenue or expense items (or any component thereof), the three (3) year time limitation described in the previous sentence shall be extended to three (3) years for such items or components. Nothing in this provision will preclude either Party from pursuing discovery of documents and information relevant to the resolution of a dispute pursuant to **Article X (Dispute Resolution)**.

9.7 Monthly Reconciliation Process. The Parties shall comply with their respective obligations in connection with the monthly reconciliation process described in **Schedule 9.7 (Monthly Reconciliation Process)**.

ARTICLE X

DISPUTE RESOLUTION

10.1 Negotiation. If a Party alleges that a dispute exists with respect to the performance of either Party under this Agreement, or arising out of or relating to this Agreement, including but not limited to issues relating to the interpretation or breach of this Agreement (a “Dispute”), the Parties shall enter negotiations in an attempt to resolve the dispute. Such negotiations will be between the President or Vice President of Seller, as representatives of Seller and the President or a Vice President of Buyer, as representatives of Buyer. Each Party may change its representatives at any time by providing written notice of any change to the other Party. Such negotiations will occur no later than fifteen (15) Business Days after written notice of such dispute by a Party and shall be concluded within forty-five (45) days after the date of such written notice (or such other period as shall be agreed by the Parties). Neither the obligation of the Parties under the immediately preceding sentences of this Section nor the existence of binding arbitration under **Section 10.4 (Arbitration)** shall restrict or limit to any extent the right of a non-defaulting Party to exercise any one or more of the remedies provided under this Agreement, subject to the obligation to arbitrate those matters below the dollar threshold set forth in **Section 10.3 (Material Disputes)**.

10.2 Mediation. If the Parties are unable to resolve the Dispute as provided for in **Section 10.1 (Negotiation)**, then the Parties may by mutual consent initiate a mediation under this **Section 10.2 (Mediation)**. The Dispute to be mediated shall be submitted to JAMS, its successor, or any other mutually agreeable neutral for non-binding mediation. The Parties will cooperate with one another in selecting a mediator from the JAMS’ panel of neutrals, or in selecting a mutually acceptable non-JAMS neutral, and in scheduling the time and place of the mediation. Unless otherwise agreed to by the Parties, however, the mediation shall occur within one hundred twenty (120) days from the date of the initial written demand for mediation. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in the costs of mediation (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the mediation, which fees and costs shall be borne by such Party). All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the mediator and any of the mediator’s agents, representatives and employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between the Parties or either of them shall be maintained in confidence; provided, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.3 Material Disputes. Unless otherwise expressly provided herein, Disputes related to amounts in excess of Five Million Dollars (\$5,000,000) or related to any fundamental right or obligation of either Party contained in this Agreement, including without limitation, the

termination rights contained in **Section 1.2 (Termination by Buyer)** and **Section 1.3 (Termination by Seller)** shall not be subject to negotiation under **Section 10.1 (Negotiation)**, mediation under **Section 10.2 (Mediation)** or arbitration under **Section 10.4 (Arbitration)** and shall be resolved by legal proceedings as set forth in **Section 14.7 (Governing Law; Submission to Jurisdiction)**. In any legal proceeding, the prevailing Party shall be entitled to recover against the other Party all of its reasonable costs and expense incurred in defending or prosecuting such litigation, including in enforcing any judgments or awards issued in connection therewith.

10.4 Arbitration.

(a) Except as set forth in **Section 10.3 (Material Disputes)**, if the Parties are unable to resolve the Dispute through mediation as provided for in **Section 10.2 (Mediation)** above, then either Party may initiate the mandatory binding arbitration under the arbitration rules of JAMS (or its successor) by providing to the other Party a written demand ("**Arbitration Demand**"). Any such Arbitration Demand shall state specifically the nature of the claim(s), the relevant time periods, a specific dollar amount alleged to be owing, if any, and any other specific information that may be necessary to define the nature of the dispute. The Party receiving the Arbitration Demand shall provide a written Arbitration Response within ten (10) days after receiving the Arbitration Demand. The Response may be a simple denial or may set forth in writing any counterclaims including the same type of information required in an original Arbitration Demand. If an Arbitration Response includes any counterclaims or proposals, then the Party originally demanding the Arbitration may reply within ten (10) days after receiving the Arbitration Response. If any Party fails to respond to any notice, the Party shall be deemed to deny the demand.

(b) With respect to any arbitration, there will be a single arbitrator, appointed by the Parties within twenty-one (21) days of the demand for arbitration. The arbitrator shall be an attorney who has five (5) years or more experience in the gas industry or representing clients in the gas industry. If the Parties are unable to agree on a single arbitrator then each Party shall select one (1) arbitrator, and the two selected Arbitrators shall jointly select a third Arbitrator (who need not be an attorney). The three Arbitrators shall serve as a panel of three Arbitrators who shall jointly decide all issues.

(c) Each Party shall have the right to engage in reasonable pre-arbitration discovery in the form of requests for production of documents and at least five (5) depositions, and other discovery as allowed by the arbitration panel. Presentation of the case shall include: opening statements, testimony of necessary witnesses, stipulated or properly authenticated documents, and closing statements. No documents may be submitted as evidence unless the documents have been provided to the opposing Party in advance of the Arbitration as allowed by the Arbitrators. Either Party may demand that a transcript of the hearing be prepared. If such a demand is made, then the parties shall each pay one-half of the cost of the transcript.

(d) The place of arbitration hearings shall be Chicago, Illinois. The arbitrator(s) shall issue a decision no later than thirty (30) days from the conclusion of the hearing. The arbitrator(s) shall be governed by and shall apply the substantive law of the State of

Illinois in making the award. All awards shall be in writing and shall state the reasoning on which the award rests unless the Parties agree otherwise. It is expressly agreed that the arbitrator shall have no authority to award consequential, incidental, special, indirect, exemplary, or punitive damages of any type under any circumstances regardless of whether such damages may be available under Illinois law or any other Applicable Law, federal law, or under the Federal or Illinois Arbitration Act, the Parties hereby waiving their rights, if any, to recover consequential, incidental, special, indirect, exemplary, and punitive damages with respect to this Agreement. The arbitrator(s) shall award reasonable attorneys' fees and disbursements to the prevailing Party in any arbitration and, if there is no clearly prevailing Party, the arbitrator may award reasonable attorney's fees and disbursements in such amounts as the arbitrator may determine. The Parties agree that all arbitration proceedings conducted hereunder and the decision of the arbitrator shall be kept confidential and not disclosed, except to Parties, Affiliates, accountants, lawyers, and regulatory bodies and in connection with regulatory proceedings or as otherwise required by law or to the extent necessary to enforce the decision. Notwithstanding the foregoing, any controversies or claims arising out of the same alleged breach, or involving the same or substantially similar factual circumstances shall be consolidated and concurrently submitted to arbitration per the provisions of this Section.

(e) The award shall be final and binding on the parties, except that either Party may appeal as provided in the Illinois Arbitration Act and/or the Federal Arbitration Act.

10.5 Equitable Relief. For any dispute or claim hereunder for which money damages would not provide an adequate remedy or is not available, including in the case of any willful or repeated breach hereof, a Party may seek specific performance, injunction, or other equitable relief from a court of competent jurisdiction. In the event of a breach by Buyer, money damages will be an adequate remedy only in the case where Seller has entered into a replacement purchase and sale agreement with a replacement buyer on terms and conditions substantially similar to this Agreement for the remaining balance of the Term.

10.6 Arbitration Expenses. The compensation and expenses of the arbitrator appointed jointly by the Parties shall be shared by the Parties, otherwise the Party selecting an Arbitrator shall pay all of the fees and expenses of that Arbitrator, and the fees and expenses of the neutral Arbitrator shall be split by the Parties.

10.7 Independent Engineer Determinations. Each Party preserves its right to dispute or contest any finding or determination by the Independent Engineer under this Agreement and to retain, at its expense, its own engineer to review the findings or work of the Independent Engineer. If there is any disagreement between the Independent Engineer and the engineer retained by Buyer regarding any findings or determinations made by the Independent Engineer under this Agreement which cannot be resolved by the Parties after thirty (30) days, the Parties shall mutually agree upon a third engineer to independently assess the matter underlying the disputed finding or determination. The finding or determination of such third engineer shall not be binding upon the Parties unless the Parties mutually agree and each Party shall have the right to challenge any determination of the third engineer if it disagrees with such third engineer's findings.

10.8 Survival of Dispute Resolution. The Parties agree that the provisions of this **Article X (Dispute Resolution)** shall survive the expiration or early termination of the Agreement.

ARTICLE XI
TITLE, RISK OF LOSS, WARRANTY, AND INDEMNITY

11.1 Title, Risk of Loss. Title and risk of loss for Conforming SNG shall pass from Seller to Buyer at the Title Transfer Point. As between Buyer and Seller, Seller shall have responsibility for risk of loss and shall assume any liability with respect to Conforming SNG prior to and at the Title Transfer Point. As between Buyer and Seller, Buyer shall have responsibility for risk of loss and shall assume any liability with respect to Conforming SNG after the Title Transfer Point. Buyer shall have no liability of any kind with respect to any loss, liability or Claim arising out of or in connection with any SNG that is not Conforming SNG that is produced, delivered or attempted to be delivered by Seller.

11.2 Warranty. Seller warrants that (a) it will have the right to convey and will transfer good and merchantable title to all SNG sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims, and (b) the SNG sold hereunder shall satisfy the quality standards of the Receiving Pipeline.

11.3 Indemnity.

(a) Seller's Indemnity. Seller agrees to indemnify Buyer and save Buyer harmless from and against any and all Claims, from any and all persons, arising from or out of (a) claims of title, personal injury or property damage from the sale of Conforming SNG under this Agreement which attach before risk of loss to such Conforming SNG passes to Buyer or which involve the condition of the SNG when delivered to the Title Transfer Point or (b) any delivery of contaminated or non-Conforming SNG to the Title Transfer Point.

(b) Buyer's Indemnity or Contribution. Subject to and except as expressly provided in **Section 11.3(a) (Seller's Indemnity)**, Buyer agrees to indemnify Seller and save Seller harmless from and against any and all Claims from any and all persons, arising from or out of claims of title, personal injury or property damage which attach after risk of loss to such Conforming SNG passes to Buyer at the Title Transfer Point.

(c) Contribution. To the extent the indemnification specified in **Sections 11.3(a) and 11.3(b) (Indemnity; Contribution)** is not legally available, then the Parties agree that there will be joint contributions with each Party contributing based on their respective responsibility for the SNG after the Title Transfer Point. The Parties acknowledge that Seller has no obligation after title to SNG is passed at the Title Transfer Point so long as such SNG is Conforming SNG.

ARTICLE XII
EVENTS OF DEFAULT AND SECURITY

12.1 Events of Default. Each of the following events shall constitute an “Event of Default” as to the affected Party:

(a) the Defaulting Party shall (i) make an assignment for the benefit of creditors, or any arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors; (iii) have such petition filed or proceeding commenced against it; and have such petition or proceeding not dismissed within ninety (90) days after its filing or commencement; (iv) otherwise become bankrupt or insolvent (however evidenced); (v) be generally unable to pay its debts as they fall due (equitable insolvency); or (vi) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets;

(b) [intentionally omitted]

(c) the Defaulting Party shall not have paid any undisputed amount due to the other Party hereunder on or before the thirtieth (30th) day following written notice that such payment is due;

(d) any representation or warranty by the Defaulting Party shall be incorrect in any material respect when made and shall not be remedied within thirty (30) days after written notice thereof is delivered to the Defaulting Party; or

(e) the Defaulting Party shall fail to perform in any material respect any of its material obligations under this Agreement (which, in the case of Seller, shall not include the obligations set forth in **Section 6.13 (MBE/WBE Requirements)** of this Agreement) and such default continues without cure for a period of thirty (30) days after written notice thereof is delivered to the Defaulting Party, or if such Event of Default is not capable of cure within thirty (30) days, then for such longer period of time as the Defaulting Party is diligently pursuing a Recovery Plan not to exceed an aggregate of ninety (90) days.

12.2 Remedies. Subject to any right to cure, if an Event of Default with respect to a Defaulting Party shall occur and be continuing, then the Non-Defaulting Party shall have the right: (a) to terminate this Agreement pursuant to **Section 1.2 (Termination by Buyer)** or **Section 1.3 (Termination by Seller)**, as applicable; (b) subject to the limitations set forth in **Section 14.12 (Limitation of Damages)**, to pursue any other remedy provided under this Agreement or now or hereafter existing at law or in equity or otherwise; (c) to immediately withhold and/or suspend deliveries or payments upon notice, in addition to any and all other remedies available hereunder; provided, however, that unless this Agreement shall have been terminated as contemplated by clause (a) above, the Non-Defaulting Party shall immediately reinstate deliveries or payments at such time that the Event of Default has been rectified or that the fact or condition giving rise to the Event of Default is no longer continuing.

12.3 Setoffs. If an Event of Default has occurred and is continuing and if the Defaulting Party is or would be owed any outstanding obligation, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such outstanding obligation any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under this Agreement or any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party relating to (a) this Agreement, (b) the transactions contemplated in or relating to this Agreement, or (c) the Project. The remedy provided for in this **Section 12.3 (Setoffs)** shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

12.4 Financing Party Cure Rights. The Financing Parties or the collateral agent acting on their behalf under any Financing shall have the right (but not the obligation) for sixty (60) days after the expiration of the deadline for performance or cure (or thirty (30) days in the event of an Event of Default involving a monetary obligation), including any applicable grace period provided in **Section 12.1 (Events of Default)**, to prevent termination of this Agreement by curing the Event of Default on behalf of Seller; provided that such sixty (60) day period shall be extended for up to an additional ninety (90) days if possession of the Plant is required for the Financing Parties or collateral agent acting on their behalf to effect a cure of an Event of Default. Notwithstanding the foregoing, following the expiration of the cure periods granted to Seller under this Agreement with respect to the breach of any monetary obligation, Buyer shall have the right to suspend its obligation to purchase Conforming SNG under this Agreement until such monetary obligation is cured. Buyer agrees to provide to the Financing Parties or collateral agent acting on their behalf under a Financing a consent to assignment and estoppel certificate as reasonably requested by such persons.

12.5 Cover Damages.

(a) Without limiting each Party's obligations to the other Party under **Section 12.2 (Remedies)** arising out of an Event of Default, each Party shall be liable to the other Party for cover damages in the event that either, as the case may be, Buyer fails to take Conforming SNG delivered by or on behalf of Seller in accordance with **Section 2.1 (Purchase Obligation)** for any reason that is not excused under this Agreement or Seller fails to deliver Conforming SNG to Buyer in accordance with **Section 2.2(b) (Delivery)**. The cover damages payable by the Parties on each Gas Day are calculated as follows: (i) in the case of Seller, cover damages for Seller's failure to deliver Conforming SNG to the Title Transfer Point on each Gas Day shall be equal to the sum of (A) the positive difference (if any) between (1) the actual costs incurred by Buyer to purchase the portion of the DCQ not made available by or on behalf of Seller to Buyer at the Title Transfer Point on such Gas Day, including the reasonable costs incurred by Buyer in effectuating such cover remedy minus (2) the product of the Chicago City-gate Price, multiplied by the difference between the DCQ for such Gas Day and the amount of Conforming SNG made available by or on behalf of Seller to Buyer at the Title Transfer Point on such Gas Day and (B) the amounts owed by Buyer for any payments and balancing penalties assessed against Buyer by the Receiving Pipeline or otherwise payable by Buyer, if any, with respect to imbalances resulting from Seller's failure to deliver Conforming SNG in the quantities nominated in accordance with **Section 4.9 (Operational Balancing)**, and (ii) in the case of

Buyer, cover damages for Buyer's failure to accept Conforming SNG made available by or on behalf of Seller at the Title Transfer Point on each such Gas Day shall be equal to the sum of (A) the negative difference (if any) between (1) the actual amounts recovered by Seller, if any, in a sale to a third party of the portion of the DCQ not accepted by Buyer on such Gas Day, including the reasonable costs incurred by Seller in effectuating such cover remedy minus (2) the product of the Monthly Invoice Contract Price multiplied by the difference between (x) the DCQ for such Gas Day and (y) the amount of Conforming SNG accepted by Buyer on such Gas Day and (B) the amounts owed by Seller for any payments and balancing penalties assessed against Seller, if any, with respect to imbalances resulting from Buyer's failure to accept Conforming SNG for any reason that is not excused under this Agreement.

(b) Without limiting Seller's obligations to Buyer under **Section 12.2 (Remedies)** arising out of an Event of Default with respect to Seller or **Section 12.5(a) (Cover Damages)**, Seller shall also be liable to Buyer for cover damages in the event that Seller sells or delivers Conforming SNG to a third party in breach of **Section 2.3(c)**. The cover damages payable to Buyer by Seller in this case shall be calculated based on the same basis as described in **Section 12.5(a) (Cover Damages)**. In addition, Buyer shall have the right to seek injunctive relief and other available equitable remedies against Seller resulting from such breach by Seller.

(c) For the avoidance of doubt, if Seller fails to deliver the amount of Conforming SNG that it has nominated in accordance with **Section 4.7 (Scheduling and Nominating Protocol)**, except to the extent such failure is caused by a Force Majeure, but Buyer nonetheless received the amount nominated from the Receiving Pipeline, then Seller shall not be liable to Buyer for any cover damages pursuant to this **Section 12.5 (Cover Damages)** but shall be liable for any amounts payable pursuant to **Section 4.9 (Operational Balancing)** as a result of Seller's failure to deliver the amount of Conforming SNG nominated by Seller to be delivered on any Gas Day.

12.6 **Limitation on Liability.** Each Party shall utilize Commercially Reasonable Efforts to effect cover for any failure by the other Party in either supplying or taking Conforming SNG hereunder in a commercially reasonable manner. Neither Party shall have any liability to the other Party as a result of a termination of this Agreement pursuant to **Section 1.2 (Termination by Buyer)** or **Section 1.3 (Termination by Seller)** other than a termination made pursuant to **Section 1.2(c) (Termination by Buyer)** or **Section 1.3(c) (Termination by Seller)**. Except for claims involving fraud or willful misconduct, no individual, officer, director, limited partner, shareholder, parent company, corporate or partnership affiliate or other similar entity of either Party shall have any personal liability or responsibility for, relating to or in connection with said Party's failure to properly perform any term, covenant, condition or provision of this Agreement. Except in the case of a claim for fraud or willful misconduct, in pursuing any remedy for a Party's breach of any of the terms, covenants and conditions of this Agreement, a Party shall not have recourse against any Person other than the defaulting or breaching Party itself or its assignees or successors. The limitations of liability set forth in this **Section 12.6 (Limitation on Liability)** shall survive the expiration or early termination of the Agreement.

12.7 **Consumer Protection Reserve Account.** Seller will establish a single special interest bearing escrow account with the Trustee in accordance with the following:

(a) Prior to issuing a Notice to Proceed, Seller shall fund the Consumer Protection Reserve Account with an initial cash amount equal to the CPR Commitment Amount in accordance with the requirements of the Public Act; provided, that such initial cash amount may not be withdrawn except in accordance with this **Section 12.7 (Consumer Protection Reserve Account)**.

(b) Interest and investment income earned in respect of the amounts held in the Consumer Protection Reserve Account shall be credited monthly to the Consumer Protection Reserve Account.

(c) During the first twenty-four (24) months following the CPD, there shall be no maximum principal amount required to be on deposit in the Consumer Protection Reserve Account. Buyer's Retail Customer's interest in the Consumer Protection Reserve Account under the terms of this Agreement is shared with the other Purchasing Utilities' Retail Customers and is therefore limited to Buyer's Allocated Percentage.

(d) For the period commencing on and after the first twenty-four (24) month period following the Commercial Production Date until the fifth (5th) anniversary of the CPD, the CPR Principal Maximum Amount shall be equal to \$150,000,000. Commencing on the fifth (5th) anniversary of the CPD, and every five years thereafter, the Trustee shall calculate the five-year average balance of the Consumer Protection Reserve Account. If the Trustee determines that during the prior five (5) years the Consumer Protection Reserve Account has had an average account balance of less than \$75,000,000, then the CPR Principal Maximum Amount shall be increased by \$5,000,000 for the following five (5) years. If the Trustee determines that during the prior five (5) years the Consumer Protection Reserve Account has had an average account balance of more than \$75,000,000, then the CPR Principal Maximum Amount shall be decreased by \$5,000,000 for the following five (5) years.

(e) At the expiration of the Term, to the extent the balance in the CRCSTA is less than the Contract Guaranty Savings Amount, Buyer's Allocated Percentage of amounts in the Consumer Protection Reserve Account shall be distributed to Buyer and Buyer shall credit that amount to its Retail Customers until its and the other Purchasing Utilities' Retail Customers have saved the minimum of Contract Guaranty Savings Amount; 50% of any additional amounts in the Consumer Protection Reserve Account shall be distributed to Seller, and Buyer's Allocated Percentage of the remaining 50% shall be distributed to Buyer and Buyer shall credit that amount to its Retail Customers through Buyer's purchased gas adjustment clause in conjunction with a SNG brownfield facility rider. If, at the expiration of the Term, the balance in the CRCSTA is equal to or greater than Contract Guaranty Savings Amount, then 50% of any amounts in the Consumer Protection Reserve Account shall be distributed to Seller, and Buyer's Allocated Percentage of the remaining 50% shall be distributed to Buyer and Buyer shall credit that amount to its Retail Customers. If, at the expiration of the Term the balance in the CRCSTA is less than \$100,000,000 and the amounts in the Consumer Protection Reserve Account are depleted or insufficient to provide the Contract Savings Guaranty, then **Section 2.7 (Contract Savings Reconciliation)** shall apply.

(f) The Parties acknowledge that the purpose of the Consumer Protection Reserve Account as contemplated in the Public Act and in this Agreement is to mitigate the risk that Retail Customers will pay higher prices for services delivered by Buyer as a result of (i) Buyer's performance of its obligations under this Agreement and (ii) each Purchasing Utility's performance of its obligations under its Other SNG Contract. Seller's interest in and contributions to the Consumer Protection Reserve Account shall not be construed as a deposit or other security for Seller's performance under this Agreement (except as provided in **Section 2.7 (Contract Savings Reconciliation)** with respect to a Contract Savings Guaranty Shortfall Amount (if any)) and therefore any Seller contributions made to the Consumer Protection Reserve Account shall not be subject to risk of forfeiture in the case of a Seller Event of Default under this Agreement.

(g) Each Party will work together with the other Party, the other Purchasing Utilities and the Trustee, to minimize the tax impacts of the transactions contemplated in this **Section 12.7 (Consumer Protection Reserve Account)**.

ARTICLE XIII **FORCE MAJEURE**

13.1 **No Liability; Definition.** Neither Party shall be liable to the other Party for failure to perform an obligation under this Agreement to the extent such failure was caused by Force Majeure. Seller and Buyer shall make Commercially Reasonable Efforts to mitigate the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. Notwithstanding any other provision hereof, the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the requirement that any Force Majeure shall be remedied with the exercise of due diligence shall not require the settlement of strikes or lockouts by a Party when such course is inadvisable in the discretion of such Party.

13.2 **Exclusions.** Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (a) failure of Seller to obtain or maintain firm transportation service, (b) the curtailment of interruptible or secondary firm transportation unless primary or in path secondary firm transportation is also curtailed; (c) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; (d) economic hardship, including, without limitation, Seller's ability to sell SNG at a higher or more advantageous price than the Adjusted Base Contract Price or Buyer's ability to purchase gas at a lower or more advantageous price than the Adjusted Base Contract Price; (e) the failure of the Plant as a result of the failure of Seller to design, construct, maintain or operate the Plant in accordance with Good Industry Practices; and (f) any circumstance or event to the extent such circumstance or event could have been prevented or mitigated by a diligent operator or resulted from the negligence of such Party or its employees or contractors.

13.3 **Notice Required.** The Party whose performance is prevented by Force Majeure must provide notice as promptly as reasonably possible to the other Party. Initial notice may be given orally; provided, however, written notice with reasonably full particulars of the event or

occurrence is required as soon as reasonably possible and in any event no later than ten (10) Business Days from the commencement of such Force Majeure. The notice will (a) identify the Force Majeure, (b) include an estimate of the duration of the event, and (c) specify the likely effect (e.g. on production capability (Seller) or the ability to take Conforming SNG (Buyer)). Upon providing written notice of a Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of the Force Majeure, to make or accept delivery of Conforming SNG, as applicable, to the extent and for the duration of the Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other Party during such occurrence or event. The Party providing notice of a Force Majeure shall update the notice if new information renders the previous notice materially inaccurate.

13.4 Maximum Duration. If a Party's performance hereunder is suspended for Force Majeure, or in the case of Seller, curtailed such that it cannot manufacture at least 25% of its production capacity of Conforming SNG, in each case, for more than 365 continuous days or for more than 300 Gas Days in a 365 Gas Day period, the other Party may, at its option, terminate this Agreement effective thirty (30) days after written notice to the Party whose performance was suspended; provided, that if (a) Seller is using Commercially Reasonable Efforts to repair or replace the Plant or otherwise remove the impediments to Seller's ability to manufacture Conforming SNG, (b) Seller has secured an adequate source of financing therefor (including through a combination of equity contributions, loans, and insurance proceeds), and (c) the Financing Parties have agreed to permit Seller to proceed with the repair or replacement of the Plant, as applicable, then such 300 Gas Days in a 365 Gas Day period shall be extended to 700 Gas Days in a 730 Gas Day period before a right to termination will arise under this Section.

ARTICLE XIV

GENERAL PROVISIONS

14.1 Assignment and Transfer.

(a) This Agreement shall be binding upon and inure to the benefit of the successors and permitted assignees of the respective Parties hereto, and the covenants, conditions, rights and obligations of this Agreement shall run for the full Term. No assignment of this Agreement, in whole or in part, will be made without the prior written consent of the non assigning Party (and shall not relieve the assigning Party from liability hereunder), which consent will not be unreasonably withheld or delayed by (1) Seller in the case of any proposed transfer by Buyer to a successor utility with the same or better credit rating as Buyer, and (2) Buyer in the case of any proposed transfer by Seller to a Qualified Transferee; provided, either Party may (i) transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other Party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

(b) Upon request of Buyer, Seller shall obtain a recognition and non disturbance agreement in form and substance reasonably acceptable to the Financing Parties

pursuant to which the Financing Parties agree that if they or any of their successors or assigns obtain title to the Plant (by foreclosure, deed in lieu of foreclosure or otherwise), the rights of Buyer hereunder shall not be disturbed and such assignee shall, except in the case of a permanent abandonment of the Plant, perform the prospective obligations of the Agreement for the benefit of Buyer. Upon request of Seller, Buyer shall enter into a consent to assignment in favor of the Financing Parties in form and substance reasonably acceptable to the Financing Parties.

14.2 Acceptance Deadline. Buyer, by duly executing this Agreement prior to the date required by the Public Act shall be deemed to have extended an offer to Seller that shall automatically expire and be deemed withdrawn at the Acceptance Deadline Time without the need for any action on the part of Buyer if Seller has not executed this Agreement by the Acceptance Deadline Time.

14.3 Waiver. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. In order to be effective, any waiver of any term of this Agreement must be in writing and signed by the waiving Party. No implied waiver shall arise by any course of dealing or any Party's forbearance from asserting its rights.

14.4 Replacement of Indices. If any publication or published index or reference on which any provision of this Agreement relies for any purpose ceases to be available, such unavailable publication or published index or reference shall be replaced by the index or reference that the Parties agree is the most closely corresponding successor publication or published index or reference that is generally accepted by wholesale purchasers and sellers of natural gas for delivery in the Midwestern United States. If the Parties cannot agree on an alternative publication or published index or reference within thirty (30) days of the prior publication or published index or reference ceasing to be available, then either Party may refer such dispute to arbitration in accordance with **Article X (Dispute Resolution)**.

14.5 Amendments. Any amendments to this Agreement must be in writing executed by both Parties. All amendments specifically contemplated to be entered into pursuant to this Agreement will not require the approval of the ICC or the IPA.

14.6 Contract Term Protection.

(a) The Parties agree that as of the Execution Date the pricing and material contract provisions of this Agreement are to be substantially similar to, and at least as favorable to Buyer on a proportionate basis, from an economic and operational standpoint, as the pricing and material contract provisions contained in the Other SNG Contracts. If Seller and another Purchasing Utility enter into an amendment of an Other SNG Contract, Seller shall provide notice to Buyer of the amendment within thirty (30) days after the effective date thereof together with a copy of such amendment. Within the thirty (30) day period following such notice, Buyer may notify Seller that it elects to receive a comparable amendment to this Agreement; provided that nothing in this **Section 14.6(a) (Contract Term Protection)** shall grant Buyer any right to receive a comparable amendment entered into with a Purchasing Utility which has been negotiated in connection with a "work out" scenario to avoid a bankruptcy filing by such Purchasing Utility. In the event of such election by Buyer, the Parties shall execute such an

amendment which shall be retroactively effective as of the effective date of the amendment to the other Purchasing Utility's Other SNG Contract, unless the Parties agree otherwise.

(b) Within sixty (60) days after the Execution Date and annually thereafter, Buyer may, at its sole expense, designate an outside counsel or accountant to review the Other SNG Contracts for the sole purpose of determining Seller's compliance with the provisions of this **Section 14.6 (Contract Term Protection)**, subject to the execution by Buyer's counsel or accountant of reasonable confidentiality and nondisclosure agreements pertaining to confidential information provided in connection therewith (which shall not prohibit communication to Buyer of any provisions in such other agreements that would entitle Buyer to an amendment of this Agreement pursuant to this **Section 14.6 (Contract Term Protection)**). Buyer agrees that information regarding this Agreement may be shared with the other Purchasing Utilities pursuant to the provisions of the agreements with such Purchasing Utilities requiring disclosure similar to this **Section 14.6 (Contract Term Protection)**.

14.7 **Imaged Agreement.** Any original executed Agreement or other related document may be photocopied and stored on computer tapes and disks. The imaged agreement stored on such computer tapes and disks, if introduced as evidence on paper will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of such imaged agreements or photocopies of such imaged agreement on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or any other rule of evidence.

14.8 **Governing Law; Submission to Jurisdiction.** This Agreement and all disputes and causes of action between the Parties (including actions in aid of arbitration) whether in contract, warranty, tort, strict liability, by statute or otherwise, shall exclusively be governed by the laws of the State of Illinois (exclusive of conflicts of law principles). Except for disputes to be resolved pursuant to **Sections 10.1 (Negotiation)**, **10.2 (Mediation)** and **10.4 (Arbitration)**, the sole and exclusive venue for any disputes, claims or causes of action, legal or equitable, shall be a court located in Cook County, Illinois and each Party irrevocably consents to the jurisdiction of any such court in any such dispute, claim or cause of action. Each Party (on behalf of itself and on behalf of its Affiliates) hereby waives any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing court on the basis of forum non-conveniens. This **Section 14.8 (Governing Law; Submission to Jurisdiction)** and its requirements shall survive the termination of this Agreement.

14.9 **Rules of Interpretation.** The singular includes the plural and the plural includes the singular. The word "knowledge" shall include only the actual knowledge of the officers of a Party involved in the negotiation and administration of this Agreement (including such Party's general counsel), and shall not include any knowledge indirectly attributable or imputable to such Person through its other officers, directors or employees. A reference to an entity or any Governmental Authority includes its successors and permitted assigns. Accounting terms have the meanings assigned to them by Generally Accepted Accounting Principles, as applied by the accounting entity to which they refer. The words "include," "includes" and "including" are not limiting. References to articles, Sections (or subdivisions of Sections), exhibits, annexes or

schedules are to this Agreement. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document. References to "days" mean references to calendar days, unless the term "Business Days" shall be used. The words "will" and "shall" shall/will be construed to have the same meaning and effect.

14.10 No Third Party Beneficiaries. The Parties expressly acknowledge and agree that there are no third party beneficiaries to this Agreement.

14.11 Headings. The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties and shall not be used to construe or interpret the provisions of this Agreement.

14.12 Limitation of Damages. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE DAMAGE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES (WHICH SHALL INCLUDE COSTS OF COVER) ONLY. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES SHALL BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THIS SECTION SHALL NOT AFFECT THE RIGHTS OF EITHER PARTY TO SEEK SPECIFIC PERFORMANCE OR OTHER EQUITABLE RELIEF.

14.13 Notices. Unless specified otherwise in this Agreement, all invoices, payments, notices and other communications made pursuant to this Agreement shall be made in writing and delivered to the addresses set forth below or as specified in writing by the respective Party from time to time. All notices required hereunder may be sent by facsimile, mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered. Notice shall be deemed to be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile or electric means shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's or e-mail software's confirmation of

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successful transmission. If the day on which such facsimile is received is not a Business Day or is after 5:00 p.m. in the receiving Party's time zone on a Business Day, then such facsimile shall be deemed to have been received on the next Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving Party. Notice via first class mail shall be considered delivered five (5) Business Days after mailing. Address for notices are as follows:

If to Seller:

Chicago Clean Energy, LLC
315 Park Avenue, South
New York, NY 10010
Attn: Donald W. Maley, Jr.
Vice President
Telephone: (212) 460-1910
Facsimile: (212) 598-4869

If to Buyer:

[UTILITY]
[ADDRESS]

Attn: [ADD]

Telephone: [ADD]
Facsimile: [ADD]

14.14 Preparation of Agreement; Costs and Expenses. This Agreement was prepared by the Parties to this Agreement and not by any individual Party to the exclusion of the other Party. The rule of contractual construction construing a contract against the drafting party is hereby waived as this Agreement is the product of the joint drafting efforts of both Parties. Each Party shall be liable for all of its respective costs and expenses incurred in connection with the negotiation and preparation of this Agreement.

14.15 Confidentiality. The Parties acknowledge that, once executed by the Parties, this Agreement is not confidential and may, in whole or in part, be filed with the IPA or the ICC as a public document. Once filed, neither Party shall have any obligation to keep its existence or its terms confidential; provided, that the Parties shall be bound by confidentiality with respect to any prior drafts of this Agreement pursuant to any applicable confidentiality agreements entered into between the Parties prior to the Execution Date. Any non-public information relating to this Agreement provided by one Party to the other Party deemed by the providing Party to be proprietary or confidential information shall be clearly marked "CONFIDENTIAL" and shall be held confidential and not be disclosed to any third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the Party or its Affiliates, regulating authorities, credit rating agencies, or prospective purchasers of all or substantially all of a Party's assets or of any rights under this Agreement; provided that in each case, such third party shall be subject to confidentiality undertakings as are customarily assumed by such parties) without the prior written consent of the other Party. In addition to the foregoing, Seller shall have no obligation to provide any confidential or proprietary third party licensed technology or related business or technical information relating to the Plant to Buyer or any of its designees, employees, officers, accountants and other agents, unless Buyer and such parties shall have executed a separate confidentiality agreement in favor of Seller's licensors and third party technology providers as required by such third parties. In the absence of executing any such required third party confidentiality and secrecy agreements, Buyer acknowledges that it may be precluded from inspecting certain areas of the Plant containing confidential information. Notwithstanding the foregoing but in all cases subject to any confidentiality obligations owing to

third party licensors and technology providers who have provided proprietary or confidential technical information to Seller, such confidential information may be disclosed without the providing Party's prior written consent (i) in order to comply with any Applicable Law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Agreement, (iii) to the extent necessary to implement any transaction in connection with the transactions described in this Agreement, (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index; provided that, unless required by Applicable Law (for the avoidance of doubt, the Parties acknowledge this includes the reporting obligations under this Agreement), the Parties shall not report prices under this Agreement to index publishers (for the avoidance of doubt, the Parties acknowledge that index publishers may obtain this information through other sources) (v) in connection with the ICC and any other Governmental Authority review or approval contemplated in the Public Act, or (vi) in connection with judicial proceedings or arbitration (including, without limitation, a subpoena, interrogatory, document request or similar discovery process in a judicial action, whether or not the disclosing Party is party thereto). Each Party shall (A) promptly notify the providing Party of any disclosure of confidential information of the providing Party that such Party proposes to make pursuant to clause (vi) of the preceding sentence or in response to any request for confidential information of the providing Party received by such Party in any of the foregoing matters to the extent such prior notification is feasible and not otherwise prohibited by Applicable Law, and (B) refrain from objecting to the non-disclosing Party's efforts to prevent or limit the disclosure by use of protective orders and confidentiality procedures as may be available in such matters. Subject to **Section 14.12 (Limitation of Damages)**, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with the confidentiality obligations under this **Section 14.15 (Confidentiality)**. The confidentiality obligations of the Parties under this **Section 14.15 (Confidentiality)** shall continue to apply for two (2) years after the termination of this Agreement.

14.16 **Mutual Cooperation.** In the absence of any Event of Default, each of the Parties agrees to reasonably cooperate with each other with respect to, and not take actions which could reasonably be expected to have an adverse effect upon, (a) Seller's development, permitting, start-up, commissioning, construction, operation and maintenance of the Plant, (b) Buyer's arrangements for the transportation of SNG delivered under this Agreement, and (c) each Party's performance of any of its respective obligations under this Agreement. In addition, each Party shall use Commercially Reasonable Efforts to make available to the other Party or its designee on a timely basis such financial data or other information as is necessary to comply with its accounting, tax and/or other disclosure requirements or periodic filings with the Securities and Exchange Commission, the Internal Revenue Service, or to answer questions from Buyer's independent auditors with regard to such filings.

14.17 **Accounting Treatment.** Seller acknowledges that it is the intent that this Agreement and the performance by Seller of its obligations under this Agreement shall be consolidated with the financial statements of Seller's parents and shall not be consolidated with the financial statements of Buyer or any of its Affiliates.

14.18 **Complete Agreement.** This Agreement sets forth all understandings between the Parties respecting each transaction subject hereto, and any prior contracts, understandings and

representations, whether oral or written, relating to such transactions, are merged into and superseded by this Agreement and any effective transaction(s).

14.19 Defense of Agreement. The Parties acknowledge and agree that this Agreement is entered into in reliance upon Applicable Law and the Public Act, including Section (h-9) of the Public Act. The Parties further acknowledge and agree that (a) this Agreement creates vested rights and substantial obligations for both Buyer and Seller in reliance upon Applicable Law and the Public Act, (b) the Parties will not do anything to undermine, diminish or impair this Agreement, directly or indirectly, or take any action with any Governmental Authority that could undermine, diminish, impair the Parties' commercial expectations under, or result in the termination of, this Agreement.

***** Signature Page Follows *****

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IN WITNESS WHEREOF, this Agreement is duly executed and effective as of the date first written above:

SELLER

CHICAGO CLEAN ENERGY, LLC,
a Delaware limited liability company

BUYER

[NAME OF PURCHASING UTILITY],
a [type of legal entity]

By:

Name:

Title:

By:

Name:

Title:

SCHEDULE I

DEFINITIONS

For the purpose of this Agreement, the following words and terms are defined as follows:

“Acceptance Deadline Time” means the date that is forty-five (45) days after the issuance of the ICC Order (which order has become final and non-appealable or all appeals (if any) of such order have concluded).

“Accounting and Depositary Services Agreement” means an accounting and services agreement to be entered into by and among Buyer, the other Purchasing Utilities, Seller and the Trustee pursuant to which the Trustee shall perform certain services on behalf of the Parties and the other Purchasing Utilities, including those outlined in **Section 2.4 (Accounting Services)**.

“Additional Products” means any and all products and/or services produced by the Plant other than the Conforming SNG that Buyer and the other Purchasing Utilities are obligated to purchase in accordance with this Agreement and the Other SNG Contracts, including argon, rare gases, sulfur, Incremental Production and Carbon Related Products (but only to the extent such Carbon Related products yield Positive Net CO2 Revenues).

“Adjusted Base Contract Price” means the Base Contract Price as adjusted for payment of New Taxes and Changes in Governmental Requirements in accordance with **Sections 5.3 (Adjustments to Base Contract Price for New Taxes and Change in Governmental Requirements)**.

“Affiliate” means, with respect to any entity, another entity which Controls, is Controlled by, or is under common Control with, such entity.

“Agreement” has the meaning specified in the Preamble of this Agreement.

“Annual Output” means an amount equal to 47,799,714 MMBtu per year.¹

“Annual Contract Quantity” or “ACQ” means, for each Contract Year, an amount not to exceed 40,151,759 MMBtu, which amount shall be prorated for any Contract Year which is less than twelve (12) months. The volume specified in the first sentence of this definition of Annual Contract Quantity shall be subject to adjustment in accordance with **Section 2.10 (Adjustment to Price and Buyer’s Allocated Percentage)** (if applicable), and such amount shall be reduced in any Contract Year by quantities of Conforming SNG that are nominated by Seller as provided in this agreement and not delivered for any reason other than a Force Majeure excusable under **Section 13 (Force Majeure)**. This figure is calculated as 84% of the Projected Annual Output.

¹ The quantity specified in this definition is based on the projected annual total production of SNG by the Plant as shown in the summary of the base case economics in the April 30, 2010 facility cost report produced pursuant to Public Act 96-0784 (i.e., the quantity is equal the sum of the projected Contract SNG quantities and Incremental SNG quantities shown in such summary).

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This amount, converted to scf using the SNG heating value of 967 btu/scf 41,521,985,498 scf, which is less than the 43,500,000,000 scf maximum Annual Contract Quantity specified in the Public Act.

“Annual Fuel Procurement Plan” has the meaning specified in **Section 4.6(b) (Contents of the Annual Fuel Procurement Plan)**.

“Annual Meeting” means the annual meeting of the Coordination Committee.

“Annualized Daily Average” means an amount equal to 110,004 MMBtu, which is the ACQ divided by 365 days. The quantity of MMBtu specified in this definition of Annualized Daily Average shall be subject to adjustment in accordance with **Section 2.10 (Adjustment to Price and Buyer’s Allocated Percentage)** (if applicable).

“Applicable Law” means, with respect to any entity, any applicable law, statute, regulation, ordinance, rule, order, decree, judgment, consent decree, settlement agreement or governmental requirement of any Governmental Authority, that are applicable to or binding upon such entity.

“Applicable MCQ” means either the MCQ or the Increased MCQ, and is the maximum monthly amount of Conforming SNG that Buyer and other Purchasing Utilities in aggregate are obligated to purchase in any single month pursuant to this Agreement and the Other SNG Contracts.

“Arbitration Demand” has the meaning specified in **Section 10.4(a) (Arbitration)**.

“Base Contract Price” means the price for Conforming SNG established in accordance with **Section 5.2 (Determination of Base Contract Price)**, prior to any adjustments contemplated in **Section 5.3 (Adjustments for Change in Governmental Requirements)** or **Section 5.5 (Adjustments for Consumer Protection Reserve Account)**.

“Bcf” means billion standard cubic feet.

“BEA” means the United States Bureau of Economic Analysis.

“Btu” means British thermal unit.

“Business Day” means any day other than a Saturday, Sunday or holiday on which commercial banks in the State of Illinois or the State of New York are authorized or required to close.

“Buyer” has the meaning specified in the Preamble of this Agreement.

“Buyer’s Allocated Percentage” means fifty percent (50%), which percentage shall be subject to adjustment in accordance with this Agreement.

“Capital Component” has the meaning specified in **Section 5.2 (Determination of Base Contract Price)**.

“Capital Lease Obligation” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Carbon Capture and Sequestration Component” has the meaning specified in **Section 5.2 (Determination of Base Contract Price)**.

“Carbon Capture and Sequestration Plan” means the Carbon Capture and Sequestration Plan prepared and submitted by Seller to the ICC for approval pursuant to Section 9-220(h-3) of the Public Act.

“Carbon Related Products” means any CO₂ and carbon related products.

“Change-in-Control of Seller” has the meaning specified in **Section 14.1(c) (Assignment and Transfer)**.

“Change in Governmental Requirements” means any of the following events which has an effect on Seller, the development, construction, and/or operation of the Plant or Seller’s ability to perform any of its obligations under this Agreement: (a) the enactment of a new Governmental Requirement after the Effective Date of the Public Act; (b) a change in interpretation or application of a Governmental Requirement after the Effective Date of the Public Act; provided that for purposes of this Agreement, the Parties agree that the Supreme Court’s decision in Massachusetts vs. EPA (April 2, 2007) finding that the Environmental Protection Agency has the authority to regulate carbon dioxide and other greenhouse gases as pollutants under the Clean Air Act and the EPA’s determination on April 17, 2009 that carbon dioxide and five other greenhouse gases constitute pollutants that are harmful to public health and welfare, as well as any resulting regulation and/or interpretation of current laws and regulations based on such Supreme Court decision and EPA determination shall constitute a Change in Governmental Requirements for all purposes of this Agreement; (c) a change in any conditions or requirements of any Governmental Approval or by any Governmental Authority after the date of this Agreement in connection with the permitting of the Plant; provided that Seller shall use Commercially Reasonable Efforts to minimize the effects of any such conditions or requirements and the costs thereof; or (d) the imposition of any condition or requirement by any Governmental Authority in connection with the grant of any financial incentive (including a Federal Loan Guarantee); provided that Seller agrees to use Commercially Reasonable Efforts to minimize the long-term effects of any such conditions or requirements and the costs thereof.

“Chicago City-gate Price” means, with respect to any Gas Day, the price per MMBtu published in the Platt’s Gas Daily under the Citygates section for the “Midpoint for the Chicago Citygates” for such Gas Day, or such other index as Buyer and Seller may agree upon from time

to time subject to the IPA's approval of the use of such alternative indices or index agreed to by the Parties.

"Claim" means any claims, judgment, demand, cause of action, loss, liabilities, interest, awards, penalties, costs, fees and expenses (including, without limitation, reasonable attorneys' fees and legal costs).

"Coal" has the meaning specified in the Recitals to this Agreement.

"Coal Usage Amount" means the actual amount of Coal used as a feedstock for the Plant during the Term (or such shorter period if this Agreement is terminated prior to the expiration of the Term pursuant to the terms of this Agreement).

"Coal Usage Shortfall Amount" means the amount by which the Coal Usage Amount is less than 50% of the aggregate amount of Coal, petroleum coke and other feedstock used by the Plant during the Term; provided that if Seller has reasonably determined in any Contract Year that it was necessary to use additional petroleum coke to deliver additional consumer savings, Coal Usage Shortfall Amount means the amount by which the Coal Usage Amount is less than 35% of the aggregate feedstock for the Plant during the Term. The Coal Usage Shortfall Amount will be determined at the end of the earlier of (a) the last day of the Term or (b) the date on which this Agreement is terminated prior to the expiration of the Term pursuant to the terms of this Agreement.

"Commercial Production Date" or "CPD" means the date determined as such pursuant to **Article III (Commercial Production)**.

"Commercially Reasonable Efforts" or "commercially reasonable efforts" means, (a) with respect to Seller as to matters relating to the Plant, efforts equivalent to those that would be exercised by an experienced owner/operator of industrial facilities of similar size and complexity to the Plant acting in good faith and taking into consideration the technology, risks, costs and benefits inherent in the installation and operation of similar facilities, considering the associated business environment, legal requirements and economics, and in general conformity with the records and operating procedures described in **Section 4.12 (Operating Records and Procedures Manuals)** and (b) with respect to both Parties as to general obligations under this Agreement which are not related to the operations of the Plant, efforts equivalent to those that would be exercised by an equivalent party acting in good faith and in a commercially reasonable manner under the particular circumstances in which such efforts are to be expended. The Parties acknowledge and agree that Buyer is a public utility and the foregoing standard applied to Buyer shall take into consideration any limitations that may apply given its status as a public utility.

"Conforming SNG" means SNG accepted by the Receiving Pipeline for further transportation on the Receiving Pipeline's pipeline system.

"Construction Commencement Milestone" means the date on which Seller has commenced construction, which requires material physical site work, such as site remediation

work, site clearing and excavation, water runoff prevention, water retention reservoir preparation, or foundation development.

“Consumer Protection Reserve Account” or “CPR Account” means the interest-bearing escrow account established by Seller at a financial institution mutually acceptable to the Parties, the other Purchasing Utilities and the ICC for the benefit of Retail Customers pursuant to **Section 12.7 (Consumer Protection Reserve Account)**.

“Contract Savings Guaranty Amount” means the aggregate savings guaranteed by Seller to Buyer and the other Purchasing Utilities, which is equal to One Hundred Million Dollars (\$100,000,000) in real 2010 dollars, from the purchase of Conforming SNG pursuant to this Agreement and the Other SNG Contracts with the other Purchasing Utilities over the Term, which aggregate savings amount shall be prorated if this Agreement is terminated earlier than the thirtieth (30th) anniversary of the Commercial Production Date.

“Contract Savings Guaranty Shortfall Amount” means the absolute value of the Contract Savings Reconciliation Amount when the Contract Savings Reconciliation Amount is less than zero. If the Contract Savings Reconciliation Amount is zero or greater then no Contract Savings Guaranty Shortfall Amount exists. The Contract Savings Guaranty Shortfall Amount will be determined at the end of the earlier of (a) the last day of the Term or (b) the date on which this Agreement is terminated prior to the expiration of the Term pursuant to the terms of this Agreement.

“Contract Savings Reconciliation Amount” means an amount equal to (a) the balance in the CRCSTA less (b) the Contract Savings Guaranty Amount.

“Contract Year” means (a) for the first Contract Year, the period commencing on the Commercial Production Date and ending on the last day of December, (b) for each Contract Year thereafter other than the last Contract Year, the twelve (12) month period commencing on the first day of January and ending on the last day of December, and (c) for the last Contract Year, the first day of January and ending on the earlier of (A) the thirtieth (30th) anniversary of the Commercial Production Date or (B) the date on which this Agreement is terminated prior to the expiration of the Term pursuant to the terms of this Agreement.

“Control” (including the terms “Controlled by,” and “under common Control with”) includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of an entity.

“Coordination Committee” means a committee established by the Parties with Seller appointing four representatives and Buyer and the other Purchasing Utilities each appointing one representative to serve on such committee to address the matters described in **Section 4.5 (Annual Meeting)**.

“CPR Commitment Amount” means an amount equal to One Hundred Fifty Million Dollars (\$150,000,000).

“CPR Principal Maximum Amount” means the maximum amount of principal to be maintained in the Consumer Protection Reserve Account as required by the Public Act and in accordance with **Section 12.7(d) (Consumer Protection Reserve Account)**.

“Cumulative Real Contract Savings Tracking Account” or “CRCSTA” means the non-cash tracking account maintained by the Trustee to track the cumulative sum of positive or negative monthly Savings Tracking Amount indexed to 2010 real dollars.

“DCQ” means, on any Gas Day, the quantity of Conforming SNG nominated by Seller for delivery to the Title Transfer Point on a day-ahead basis.

“Defaulting Party” means the Party in respect of which an Event of Default has occurred under **Section 12.1 (Events of Default)**.

“Delivery Meter” means the meter located at the Plant site boundary at which point deliveries of SNG are delivered to the Receiving Pipeline and are measured.

“DOE” means the Department of Energy of the United States of America.

“DOE Guaranteed Financing” means the construction and long-term financing, if any, to be provided by the Financing Parties that is guaranteed by the DOE pursuant to a Federal Loan Guarantee.

“Effective Date of the Public Act” means July 13, 2011.

“EPC Contract” means (a) a turnkey engineering, procurement and construction contract for the construction of the Plant or (b) one or more contracts that are intended to be the equivalent of a turnkey engineering, procurement and construction contract for the construction of the Plant, that in either case is entered into by Seller with a contractor or contractors selected by Seller pursuant to which the Plant is to be constructed and delivered to Seller.

“EPC Contractor” means the counterparty or counterparties to the EPC Contract.

“Event of Abandonment” means the willful abandonment of the Project by Seller for a period of one hundred eighty (180) consecutive days.

“Event of Default” has the meaning specified in **Section 12.1 (Events of Default)**.

“Execution Date” has the meaning provided in the Preamble of this Agreement.

“Federal Loan Guarantee” means a guarantee, if any, relating to the Financing for the Project issued by an agency of the federal government of the United States, supported by the full faith and credit of the United States government.

“Feedstock Forecast” has the meaning ascribed thereto in **Section 4.6(a) (Feedstock Requirements and Procurement Plans)**.

“Feedstock Procurement Plan” has the meaning ascribed thereto in **Section 4.6(a) (Feedstock Requirements and Procurement Plans)**.

“Financial Closing Date” means the date on which all conditions precedent to the financial closing of the Financing have been satisfied and Seller is entitled to draw funds thereunder.

“Financing” means the initial debt financing provided by one or more banks and financial institutions to Seller to finance the Project (including a sale-leaseback, leverage lease financing, or any DOE Guaranteed Financing), including any refinancing thereof to the extent that the requirements set forth in **Section 6.6 (Financing Limitations)** have been satisfied.

“Financing Parties” means the financial institution(s) providing any Financing.

“Force Majeure” means, except as provided in **Section 13.2 (Exclusions)**, with respect to each Party claiming relief of its obligations under this Agreement, any cause not reasonably within the control of such Party claiming relief, and shall include, but not be limited to, the following: (a) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, droughts, floods, washouts, explosions, breakage or accident; (b) weather related events affecting an entire geographic region which cause freezing or failure of facilities or lines of pipe; (c) interruption or curtailment of firm transportation by Receiving Pipeline; (d) the loss or disruption of external electricity supply to the Plant; (e) acts of others such as strikes, lockouts or other industrial disturbances (but excluding any strikes, lockouts or disturbances occurring at the Plant), riots, sabotage, terrorism, insurrections or wars; (f) the failure or interruption of performance by suppliers by reason of such supplier’s valid declaration of a Force Majeure permitted under Seller’s contract with such supplier; (g) the breach or violation of this Agreement by the other Party or any unlawful action by the other Party that prevents such Party from performing its obligations under this Agreement; (h) delay or failure of any Governmental Authority to issue any Governmental Approval properly and timely applied for (including without limitation any delay or failure by any Governmental Authority to issue any Governmental Approval as a result of any legal challenge or intervention by any third party); and (i) any challenge, proceeding, claim or intervention of any kind by any third party affecting the validity of the issuance or proposed issuance of a Governmental Approval. For the avoidance of doubt, Force Majeure shall include not only the cause itself that prevents or delays the claiming party from performing its obligations under this Agreement, but also any damage, delay, or other effects that may be caused by such cause that effectively prevents the claiming party from performing its obligations; therefore, the contractual consequences of the occurrence of a Force Majeure and deadline extensions shall apply for the duration not only of such cause itself, but also for the duration of the damages, delay or other effects caused by such cause or event that effectively prevents the claiming party from performing its obligations (and in the case of Seller, that may affect the EPC Contractor or the operator of the Plant).

“Fuel Component” has the meaning specified in **Section 5.2 (Determination of Base Contract Price)**.

“GAAP” means generally accepted accounting principles used in the United States consistently applied and in effect from time to time and may be in effect concurrently with or superseded by International Financial Reporting Standards.

“Gas Day” means a period of twenty-four (24) consecutive hours, coextensive with a “gas day” as defined by the Receiving Pipeline.

“Good Industry Practice” means those practices, methods, and acts that are commonly used by a significant portion of the chemical manufacturing, refining, solid fuel gasification and natural gas transportation industries in prudent engineering and operations to design, construct, operate and maintain with safety, dependability, efficiency, and economy solid fuel gasification facilities.

“Governmental Approval” means any approval, consent, waiver, exemption, variance, franchise, permit, authorization, registration, or license to, with or from a Governmental Authority.

“Governmental Authority” means any person, entity, department, commission, board, agency or instrumentality that exercises executive, legislative, judicial or administrative authority of any government, including federal, state, county and local governments and political subdivisions thereof.

“Governmental Requirements” means any laws, statutes, rules, regulations, codes, orders, decisions, rulings and judgments of any Governmental Authority with jurisdiction over the Plant, the Parties or any or all of the subject matter of this Agreement existing as of the Effective Date of the Public Act, but excludes DOE requirements under any DOE Guaranteed Financing.

“GDP Deflator” means the most recent “final” Gross Domestic Product Implicit Price Deflator as published by the BEA approximately three (3) months after the end of the calendar year, or in the event that the BEA discontinues such index, such comparable replacement index as shall be mutually agreed by the Parties.

“ICC” means the Illinois Commerce Commission.

“ICC-Approved Carbon Capture and Sequestration Plan” means the Carbon Capture and Sequestration Plan submitted by Seller and approved by the ICC in accordance with Section 9-220(h-3) of the Illinois Public Utilities Act.

“ICC-Approved Annual Fuel Procurement Plan” means, for each Contract Year, the annual fuel procurement plan approved by the ICC pursuant to Section 1-78 of the IPA Act for the Plant as in effect for such Contract Year.

“ICC-Approved Feedstock Procurement Plan” means, for each Contract Year, the feedstock procurement plan prepared by the IPA and approved by the ICC, in each case, pursuant to and in accordance with Sections 1-77 and 1-78 of the IPA Act that is in effect for such Contract Year.

“ICC Order” means an order issued by the ICC approving this Agreement for purposes of the Public Act, and approving the Capital Component (including rate of return to Seller) and O&M Component, that has become final and non-appealable or all appeals (if any) of such order have concluded.

“Illinois Public Utilities Act” means the Illinois Public Utilities Act, codified at 220 ILCS 5/1-101, et seq.

“Increased MCQ” means, the product of (a) the applicable Seasonal Shaping Factor and (b) one hundred ten percent (110%) of the Monthly Annualized Average.

“Incremental Production” means (a) production of Conforming SNG on any Day in excess of the Maximum DCQ on any Gas Day, in any month in excess of the Applicable MCQ for such month, or in excess of the ACQ in any Contract Year; (b) electricity supply capacity available for sale; and (c) production of electric energy.

“Incremental Revenues” means, collectively, all revenues derived from (a) the sale of Incremental Production; and (b) the sale of Additional Products.

“Incremental SNG Quantity” has the meaning specified in **Section 2.10 (Adjustment to Price and Buyer’s Allocated Percentage)**.

“Indebtedness” of any Person at any date means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as Capital Lease Obligations in respect of which such Person is liable, (e) all obligations of such Person under interest rate or currency protection agreements or other hedging instruments, (f) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (g) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (h) all Indebtedness of others secured by a lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person, and (i) all Indebtedness of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee or other arrangement to assure a creditor against loss.

“Independent Engineer” means the independent engineer retained by the Financing Parties for the purposes of evaluating a Recovery Plan and certain other matters under this Agreement; provided that if the Financing Parties cease to retain an independent engineer, the independent engineer who had been serving previously as Independent Engineer shall be jointly retained by the Parties for the purpose of evaluating the matters under this Agreement, unless either Party notifies the other Party that it objects to the continued engagement of such independent engineer, in which case such objecting Party will provide the non-objecting Party

with the names of three nationally recognized independent engineering firms that are qualified to provide the evaluations required under this Agreement and the non-objecting Party shall select from the names provided the replacement Independent Engineer.

“Illinois Public Utilities Act” means the Illinois Public Utilities Act, codified at 220 ILCS 5/1-101, et seq.

“Inspector” means a third party independent engineer selected by Buyer and reasonably acceptable to Seller to conduct an inspection of the Plant for purposes of **Section 4.10 (Buyer’s Right to Inspect Plant)**.

“IPA” means the Illinois Power Agency.

“IPA Act” means the Illinois Power Agency Act, codified at 20 ILCS 3855/1-1, et seq.

“JAMS” means JAMS (formerly known as Judicial Arbitration and Mediation Services, Inc.), a private alternative dispute resolution provider selected by the Parties to resolve certain disputes arising under this Agreement as contemplated in **Section 10.2 (Mediation)**.

“Knowledge” or “knowledge” has the meaning specified in **Section 14.9 (Rules of Interpretation)**.

“Maximum DCQ” means, on any Gas Day in a month, a quantity of Conforming SNG equal to product of (a) the applicable Seasonal Shaping Factor for such month and (b) one hundred and ten percent (110%) of the Monthly Annualized Average divided by the number of Gas Days in such month.

“Maximum Foreseeable Loss” means the largest combined property loss and loss of income, which can occur under the most adverse conditions reasonably foreseeable.

“Milestone” means any of the milestones listed in **Section 3.4 (Seller Milestone Dates)**.

“MMBtu” means one million (1,000,000) Btus.

“Monthly Actual Annualized Average” means, as of date of determination, the aggregate amount of Conforming SNG purchased by Buyer since the beginning of the Contract Year in which such date of determination occurs through the end of the first full calendar month immediately preceding such date of determination, divided by the number of full calendar months that have elapsed in such Contract Year as of the date of determination.

“Monthly Annualized Average” means an amount equal to 3,345,980 MMBtu, which is the ACQ divided by 12 months. The quantity of MMBtu specified in this definition of Monthly Annualized Average shall be subject to adjustment in accordance with **Section 2.10 (Adjustment to Price and Buyer’s Allocated Percentage)** (if applicable).

“Monthly Base Overage Amount” means one-twelfth of \$174,000,000, which amount is equal to 2.015% of the average annual amounts paid by all gas distribution customers of the

Purchasing Utilities during the 5-year period ending May 31, 2010. For the avoidance of doubt, the Monthly Base Overage Amount is \$14,500,000 in 2010 dollars.

“Monthly Contract Quantity” or “MCQ” means, for each month, the product of (a) the applicable Seasonal Shaping Factor for such month and (b) one hundred five percent (105%) of the Monthly Annualized Average.

“Monthly Delivered Quantity” or “MDQ” means, for each month, the aggregate quantity of Conforming SNG produced by the Plant and delivered to and accepted by Buyer and the other Purchasing Utilities, not to exceed the Applicable MCQ for such month.

“Monthly Inflation-Adjusted Base Overage Amount” means, for each month, the Monthly Base Overage Amount for such month as adjusted by Seller to account for inflation based on the GDP Deflator in accordance with the procedure described in **Schedule 5.5 (Inflation Adjustments Applicable to the Calculation of the Savings Tracking Amount and the Monthly Inflation-Adjusted Base Overage Amount)**.

“Monthly Invoice Contract Price” means, for each month, the Adjusted Base Contract Price as modified based upon the procedures described in **Section 5.5 (Adjustments for Consumer Protection Reserve Account)**.

“Monthly Weighted Average Chicago City-gate Price” means, for each month, the weighted daily average price for natural gas calculated based upon the Chicago City-gate Price, weighted based upon the volume of Conforming SNG delivered by Seller for each day in such month.

“Mortgage and Security Agreement” has the meaning specified in **Section 2.8 (Security for Contract Savings Guaranty Shortfall Amount)**.

“Negative Net CO2 Revenues” means the net aggregate (negative) revenues realized from the sale of Carbon Related Products after deducting all costs and expenses associated with CO2 capture, compression, transportation and sequestration to the extent such costs and expenses are not otherwise included in the determination of the Base Contract Price or the Adjusted Base Contract Price or are not permitted to be passed through to a Purchasing Utility or its customers pursuant to Section 9-220(h-5) of the Public Act.

“Net Incremental Revenues” shall be determined each month on an aggregate basis for all Additional Products as the amount equal to (a) the aggregate Incremental Revenues for such month for all Additional Products, minus (b) the aggregate of all costs and expenses incurred to generate such aggregate Incremental Revenues to the extent such costs and expenses are not otherwise included in the determination of the Base Contract Price or the Adjusted Base Contract Price or, under the Public Act, are not permitted to be passed through to a Purchasing Utility or its customers, including (i) with respect to Incremental Production, deducting fuel costs associated with such Incremental Production, calculated by subtracting (A) an amount equal to the applicable monthly Fuel Component multiplied by the applicable MDQ from (B) the total fuel expenditure in such month, (ii) the reasonable incremental operating costs actually incurred

(which incremental operating costs shall be subject to verification by an independent third party engineer and audited by Seller and/or Buyer, if there is any disagreement with the verification), (iii) with respect to argon, the incremental capital costs reasonably allocated to the production of argon, (iv) reasonable marketing expenses actually incurred and associated with the sale of Additional Products, and (v) incremental Taxes assessed against Seller in connection with the generation of Incremental Revenues. The actual expenses, including incremental operating costs, described above reasonably incurred in connection with the production of such Additional Products will be verified by the Independent Engineer within ninety (90) days after the end of the applicable Contract Year (which amount verified by such Independent Engineer shall be subject to audit by Seller and/or Buyer as applicable).

“New Taxes” means any new Taxes or increase in Taxes, enacted or otherwise made applicable after the Effective Date of the Public Act by any Governmental Authority (whether or not contemplated or introduced as a bill on the Execution Date) including any Taxes in the nature of carbon taxes, energy related taxes, Btu taxes, taxes on the heat content of energy, transportation taxes, or similar Taxes on SNG sold under this Agreement, which are otherwise the responsibility of Seller under this Agreement. “New Taxes” shall not include income taxes or any interest, fine, penalty or assessment imposed on Seller as the result of Seller’s failure to comply with any Governmental Requirement.

“Non-Defaulting Party” means, in the case that an Event of Default has occurred with respect to either Buyer or Seller, the other Party who has not defaulted in its obligations under this Agreement.

“North Shore” means North Shore Gas Company.

“Notice to Proceed” means an unlimited notice to proceed with the scope of services under the EPC Contract issued by Seller pursuant to the EPC Contract.

“O&M Component” means the O&M Component described in **Section 5.2 (Determination of Base Contract Price)**.

“O&M Expenses” means, collectively, in respect of any period, the aggregate operation and maintenance expenses related to the production of Conforming SNG and Additional Products of the Plant for such period.

“O&M Indices” means the basket of indices provided in **Section 5.2 (Determination of Base Contract Price)** that are used to annually compute the Adjusted O&M Component.

“Other Lenders” means the Persons providing any Permitted Indebtedness to Seller in respect of the Project other than the Financing and any refinancing of the Financing that satisfied the requirements of **Section 6.6 (Refinancing Limitations)**.

“Other SNG Contract” means each sourcing agreement entered into between Seller and each Purchasing Utility (or another qualified buyer in accordance with **Section 2.10**

(Adjustment to Price and Buyer's Allocated Percentage)) in form and substance substantially similar to this Agreement.

"Output Quality Requirements" has the meaning specified in **Section 4.1 (Quality)**.

"Outside Completion Date" means, as to a Milestone, the outside completion date for such Milestone as specified in **Section 3.4 (Seller Milestone Dates)**.

"Overage Amount" means, for each month, the amount, if any, by which (a) the product of the Adjusted Base Contract Price multiplied by the MDQ exceeds (b) the sum of (i) the product of the Monthly Weighted Average Chicago City-gate Price multiplied by the MDQ plus (ii) the Monthly Inflation-Adjusted Base Overage Amount.

"Party" and **"Parties"** have the meanings specified in the Preamble of this Agreement.

"Peoples" means Peoples Gas Light and Coke Company.

"Permitted Indebtedness" means (a) the Financing; (b) surety bonds, performance bonds or similar arrangements with third-party sureties or indemnitors or similar Persons in connection with a good faith contest; (c) any additional financing in connection with capital improvements to the Plant required under Applicable Law as a result of a Change in Governmental Requirements, (d) any refinancing of the Financing permitted under this Agreement, (e) indebtedness secured by Permitted Liens; (f) indebtedness for working capital purposes not to exceed Sixty Million Dollars (\$60,000,000); (g) unsecured, subordinated intercompany indebtedness permitted by the terms of the Financing; (h) financing incurred by Seller in the ordinary course of Seller's business or otherwise permitted by the terms of the Financing and not in excess of Fifty Million Dollars (\$50,000,000) in the aggregate at any one time outstanding.

"Permitted Liens" means, collectively, (a) the liens in favor of the Financing Parties under the definitive documents associated with the Financing, (b) liens for (i) taxes, assessments or governmental charges not delinquent and that remain payable without penalty or (ii) taxes, assessments or governmental charges being contested in good faith, if Seller has established adequate reserves consistent with GAAP for such taxes, (c) suppliers', vendors', workmen's, repairmen's, employee's, mechanics', materialmen's, construction or other like liens arising in the ordinary course of business for amounts the payment of which is either (i) not yet delinquent or (ii) being contested in good faith, if (A) Seller has established adequate reserves for the discharge of such liens and (B) such proceedings do not involve a material risk of the sale, forfeiture or loss of the Plant or the Plant site (or any material part of any thereof) or are bonded for the amount required under Applicable Laws to release any such liens, (d) pre-judgment liens for claims against Seller which are contested in good faith and liens arising out of judgments or awards against Seller with respect to which an appeal or proceeding for review is being prosecuted in good faith and to which a stay of execution has been obtained pending such appeal or review and so long as such proceedings do not involve a material risk of the sale, forfeiture or loss of the Plant or the Plant site (or any material part of any thereof) and are bonded for the amount required under Applicable Laws to release any such liens, (e) such defects, easements, rights of way, restrictions, physical irregularities and statutory liens that do not legally or

operationally impair the value or utility of the Plant, (f) deposits or pledges to secure (i) statutory obligations or appeals, (ii) release of attachments, stay of execution or injunction, (iii) performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or (iv) for purposes of like general nature in the ordinary course of business, (g) liens in connection with worker's compensation, unemployment insurance or other social security or pension obligations, (h) other liens incidental to the conduct of Seller's business (other than for borrowed money) which do not in the aggregate materially impair the operation of Seller's business (i) liens of record showing on a title report which have been consented to by the Financing Parties, (j) liens in favor of the Other Lenders in respect of Permitted Indebtedness (to the extent the definition of Permitted Indebtedness contemplates such indebtedness being secured) and (k) any other liens agreed in writing between the Parties.

"Person" means an individual (including the heirs, beneficiaries, executors, legal representatives or administrator thereof), corporation, unincorporated association, limited liability company, partnership, limited partnership, joint venture, trust, joint stock company, association or any Governmental Authority.

"Planned Outage" means any interruption in service or reduction of output of the Plant that results from (a) any scheduled maintenance of the Plant conducted by or on behalf of Seller or (b) inspection or other requirement of Governmental Authority.

"Plant" has the meaning specified in the Recitals to this Agreement and means the clean coal SNG brownfield facility being developed by Seller in Chicago, Illinois that will produce SNG and the Additional Products.

"Plant Construction Participants" has the meaning specified in **Section 6.2 (Insurance)**.

"Plant Cost Accounting System" means software or other systems used to account for and track expenditures and maintenance programs at the Plant.

"Plant Operations and Maintenance Plan" means the Plant operations and maintenance plan established by the Seller.

"Positive Market Differential" means has the meaning set forth in **Section 5.5(c)(iii) (Adjustments for Consumer Protection Reserve Account)**.

"Positive Net CO2 Revenues" means the net aggregate (positive) revenues realized from the sale of Carbon Related Products after deducting all costs and expenses associated with CO2 capture, compression, transportation and sequestration to the extent such costs and expenses are not otherwise included in the determination of the Base Contract Price or the Adjusted Base Contract Price or, are not permitted to be passed through to a Purchasing Utility or its customers pursuant to Section 9-220(h-5) of the Public Act.

"Preamble" means the first paragraph of this Agreement.

"Prime Rate" means the rate of interest most recently published from time to time in the Money Rate Table of the Wall Street Journal as the U.S. Prime Rate of interest.

“Production Test” means a performance test of the Plant conducted for a consecutive thirty (30) day period in accordance with the test procedures established under the EPC Contract to measure the average daily quantity of SNG produced by the Plant; provided, however, that if during such thirty (30) consecutive day period there shall occur an event of Force Majeure which adversely affects the production of SNG, the day affected by such event of Force Majeure shall be excluded from the determination period and the thirty (30) consecutive period shall be extended by each such day that SNG production is adversely affected by Force Majeure until there are thirty (30) days in the test period; provided, further, that notwithstanding the extension provided herein for events of Force Majeure, the thirty (30) days included in the test period must occur within sixty (60) consecutive calendar days. For example if the Production Test commences on day one, and there is an event of Force Majeure that adversely affects SNG production for two (2) days, then the Production Test will be completed on day thirty-three (33) and the test results shall be calculated on the thirty (30) completed test days excluding the test days affected by Force Majeure; provided that all thirty (30) completed test days fall on or before day sixty (60).

“Project” means the development, design, construction, equipping, completion, testing, commissioning, ownership, operation and maintenance of the Plant.

“Project Revenue Account” means the account established by or on behalf of the Seller pursuant to the definitive documents entered into in respect of the Financing into which Seller’s share of all revenues deposited into the Project is to be deposited.

“Public Act” means Illinois Public Act 97-0096.

“Purchasing Utility” means each Illinois gas utility providing service to more than 150,000 customers on the Effective Date of the Public Act that has elected to enter into a sourcing agreement with Seller.

“Qualified Transferee” means any Person that (a) has a tangible net worth in excess of One Hundred Million Dollars (\$100,000,000) and (b) meets the requirements set forth on **Schedule 14.1(b) (Operational Experience and Criteria for Transferees)**.

“Re-Allocated SNG Quantity” has the meaning specified in **Section 2.10(c) (Adjustment to Price and Buyer’s Allocated Percentage)**.

“Receiving Pipeline” means the pipeline facilities mutually agreed to by the Buyer and Seller that will receive Conforming SNG from Seller for transportation and ultimately for delivery to Buyer at the Title Transfer Point.

“Recitals” means the recitals to this Agreement.

“Recovery Plan” means, with respect to either Party, a plan proposed by such Party to either (a) cure its Event of Default, which plan shall have been received and confirmed by the other Party or (b) enable such Party to achieve one of its respective Milestones, which plan shall have been reviewed by the Independent Engineer and confirmed by the Independent Engineer to

be reasonably likely to effect a cure or to permit such Party to meet such Milestone within the time periods permitted under this Agreement for such cure or achievement.

“Retail Customers” for purposes of this Agreement means all end-use customers who receive distribution service from Buyer or any other Purchasing Utility.

“Savings Tracking Amount” means for each month during the Term, the positive or negative difference between (i) the product of the Monthly Delivered Quantity times the Monthly Weighted Average Chicago City-gate Price and (ii) the product of the Monthly Delivered Quantity times the Monthly Invoice Contract Price.

“scf” means standard cubic feet.

“Scheduling and Nominating Protocol” means a detailed scheduling and nomination protocol for use between the Plant operator and Buyer to be agreed upon as provided in **Section 4.7 (Scheduling and Nominating Protocol)**.

“Seasonal Shaping Factor” means, with respect to each Month, the applicable shaping factor identified for such month in **Schedule 1.2a**.

“Section” means a numbered Section of this Agreement, unless the context requires otherwise.

“Seller” has the meaning specified in the Preamble of this Agreement.

“SNG” has the meaning specified in the Public Act.

“Tax” or “Taxes” means all federal, state or local taxes, including any income taxes, sales, use and transfer taxes, the taxable incident of which occurs prior to, at or after the time that title and possession to Conforming SNG passes from Seller to Buyer under this Agreement.

“Term” means the thirty (30) year period commencing on the Commercial Production Date and ending on the thirtieth (30th) anniversary of the Commercial Production Date.

“Title Transfer Point” has the meaning specified in **Section 4.8 (Transportation Contracts and Marketing Agreements)**.

“Transportation and Marketing Component” has the meaning specified in **Section 5.2 (Determination of Base Contract Price)**.

“Trustee” means the Person selected by Buyer, the other Purchasing Utilities and Seller from time to time (with the approval of the ICC) to provide certain accounting and other services on behalf of the Parties and the other Purchasing Utilities pursuant to the Accounting and Depositary Services Agreement.

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GLOSSARY OF ACRONYMS:

<u>Acronym</u>	<u>Defined Term</u>
ACQ	Annual Contract Quantity
BEA	United States Bureau of Economic Analysis
CPD	Commercial Production Date
CPR Account	Consumer Protection Reserve Account
CRCSTA	Cumulative Real Contract Savings Tracking Account
DOE	Department of Energy of the United States of America
GAAP	Generally Accepted Accounting Principles
ICC	Illinois Commerce Commission
IPA	Illinois Power Agency
MCQ	Monthly Contract Quantity
MDQ	Monthly Delivered Quantity
SNG	Substitute Natural Gas

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SCHEDULE 2.1A

SEASONAL SHAPING FACTOR

Month	Seasonal Shaping Factor
January	1.060
February	0.957
March	1.046
April	0.990
May	1.002
June	0.952
July	0.975
August	0.978
September	0.960
October	1.014
November	1.007
December	1.059
TOTAL	12.000

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SCHEDULE 2.10

ORIGINAL ALLOCATIONS

Nicor	42.0%
Peoples	26.9%
Ameren	25.1%
North Shore	6.0%
	100%

SCHEDULE 4.3

MAJOR EQUIPMENT LIST

1. Coal handling system, grinding and slurry preparation
2. Gasifiers
3. Slag handling system
4. Air separation unit
5. Syngas scrubbers
6. Syngas coolers
7. CO shift reactor
8. Mercury removal system
9. Acid gas removal system
10. Sulfur recovery system
11. Methanation unit
12. Steam turbine generator/condenser
13. Cooling tower
14. Raw water treatment system
15. Wastewater treatment system
16. Electrical switchyard

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SCHEDULE 5.2A

FORMULA FOR ADJUSTMENT OF CAPITAL COMPONENT

Row	Component	Approved	Status
A	Commission Approved Capital Costs (\$)	2,938,225,690	Fixed
B	Actual Interest Rate (%)		Actual
C	Debt Percentage (%)	70%	Fixed
D	Approved Debt Amount (\$) = A x C	2,056,757,983	Computed
E	Debt Term (Years)	30	Fixed
F	Approved Cost of Debt (\$/year) = Levelized amortization based on B, D, E		Computed
G	Commission-Approved Equity Amount (\$) = A x (1- C)	881,467,707	Computed
H	Commission-Approved Rate of Return on Equity	4.44%	Fixed
I	Commission-Approved Return on Equity (\$/year) (%) = G x H	39,137,166	Computed
J	Projected Output of the Plant (MMBtu/year)	47,799,714	Fixed
K	Purchase Responsibility (%)	84.00%	Fixed
L	Purchase Responsibility (MMBtu/Year) = J x K	40,151,759	Computed
M	ICC-Approved Cost Recovery Percentage (%)	95.452838%	Fixed
N	Volume Approved for Pricing Purposes (MMBtu) = L / M	42,064,500	Computed
O	Cost of Debt (\$/MMBtu) = F / N		Computed
P	Commission Approved Return on Equity (\$/MMBtu) = I / N	0.93	Computed
Q	Capital Recovery Charge (\$/MMBtu) = O + P		Computed

Notes:

Actual values for Row (B) to be determined at the time of actual debt issuance.

Values for Rows (D), (F), (G), (I), (L), (N), (O), (P), and (Q) computed using formulae shown.

Levelized amortization is computed using the formula:

$$\frac{\text{Debt Amount} \times \text{Interest Rate}}{1 - (1 + \text{Interest Rate})^{(-\text{Debt Term})}}$$

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SCHEDULE 5.2B

FORMULA FOR THE ADJUSTMENT OF THE
OPERATIONS AND MAINTENANCE COMPONENT

Row	Component	Approved
A	Commission Approved O&M Budget (\$/year)	84,018,452
B	Projected Output of the Plant (MMBtu/year)	47,799,714
C	Purchase Responsibility (%)	84.00%
D	Purchase Responsibility (MMBtu/Year) = B x C	40,151,759
E	Commission-Approved Cost Recovery Percentage (%)	95.452838%
F	Volume Approved for Pricing Purposes (MMBtu/year) = D / E	42,064,500
G	Commission-Approved O&M Charge (\$/MMBtu) = A / F	2.00

SCHEDULE 5.2C

CALCULATION OF FUEL COMPONENT

The Fuel Component of the Base Contract Price for each calendar month shall be determined using a delivered fuel cost established each month on a \$/MMBtu basis and converted into the SNG Fuel Component using the following procedure:

The \$/MMBtu delivered fuel cost will be determined each month by: (a) measuring the quantity of fuel used each month by type and then applying First-In-First-Out (FIFO) accounting (that will look to the oldest fuel deliveries by type in the fuel inventory first) to establish the cumulative cost of the fuel consumed that month; and then (b) dividing by the total MMBtus of all Conforming SNG produced during the month. Further detail follows:

1. Quantity Measurement--Real-time measurement and tracking at the Plant of the quantity of fuel (tons of coal and petcoke, gallons or mcf of start-up and other fuel) used during the month for each type of fuel used.
2. Cost Accounting--Calculation of the total dollar cost of fuel consumed in the month for each type of fuel by applying a \$/ton (for coal and petroleum coke fuel), \$/gallon (in the case of liquid fuel), or \$/mcf (in the case of gaseous fuel) cost based on the fuel cost terms specified in fuel procurement contracts and using FIFO accounting that applies the cost of the oldest fuel in the inventory first (by fuel type) until the total quantity of fuel by fuel type used during the month has been accounted for.
3. Energy Content Accounting (Fuel)--Conversion of the monthly measured quantity of fuel by fuel type used during the month into an MMBtu energy equivalent by applying the average fuel heat content of measured fuel samples (btu/lb for coal and petroleum coke, btu/gallon for liquid fuel, or btu/mcf for gaseous fuel), or if sampling data are not available, guaranteed levels specified in fuel procurement contracts and using FIFO accounting that applies the heat content of the oldest fuel in the inventory first (by fuel type) until the total quantity of fuel by fuel type used during the month has been accounted for.
4. Energy Content Accounting (SNG)--Conversion of the monthly measured quantity of Conforming SNG produced during the month (in scf) into an MMBtu energy equivalent by applying the explicit or implicit conversion rate (Btu per scf) used by the Receiving Pipeline.
5. Fuel Component—the \$/MMBtu Fuel Component of the Base Contract Price for the month will be determined by dividing the total cost of all fuels consumed during the month (the sum of item 2 above) by the total MMBtus of all Conforming SNG produced during the month (the sum of item 4 above).

SCHEDULE 5.2D

CALCULATION OF CARBON CAPTURE AND SEQUESTRATION COMPONENT

**[TO BE ATTACHED AFTER ICC APPROVAL OF CARBON CAPTURE AND
SEQUESTRATION PLAN]**

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SCHEDULE 5.5

INFLATION ADJUSTMENTS APPLICABLE TO THE CALCULATION OF THE SAVINGS
TRACKING AMOUNT AND MONTHLY INFLATION-ADJUSTED BASE OVERAGE
AMOUNT

The table below illustrates how the GDP Deflator will be calculated (future values of the GDP Implicit Price Deflator are for illustrative purposes only) and applied to current period Savings Tracking Amount prior to adding it to the CRCSTA.

Data Source	Year (T)	GDP Implicit Price Deflator	GDP Actual Deflator Value	GDP Actual Deflator Formula	GDP Current Year Deflator Value (X)	Inflation Factor (1+X)	1+X Formula
BEA Actual	2005	100					
BEA Actual	2006	103.257	0.0326	$=(103.257/100)-1$		1.0326	$=1+X$
BEA Actual	2007	106.296	0.0294	$=(106.296/103.257)-1$		1.0294	$=1+X$
BEA Actual	2008	108.619	0.0219			1.0219	
BEA Actual	2009	109.615	0.0092			1.0092	
BEA Actual	2010	110.659	0.0095			1.0095	
Assumed	2011	113.877	0.0291			1.0291	
Assumed	2012	116.011	0.0187			1.0187	
Assumed	2013	118.145	0.0184			1.0184	
Assumed	2014	120.279	0.0181			1.0181	
Assumed	2015	122.413	0.0177			1.0177	
Assumed	2016	124.547	0.0174			1.0174	
Assumed	2017	126.681	0.0171			1.0171	
Assumed	2018	128.815	0.0168		[average of 2017,	1.0168	
Assumed	2019	130.949	0.0166		2018, and 2019]	1.0166	
Assumed*	2020				0.0168	1.0084	$=(X+1)^{(6/12)}$

The calculation here shows how to calculate the GDP deflator factor used for the purposes of adjusting the Sales Tracking Amount to real 2010 dollars, and also to convert the Monthly Base Overage Amount to the Monthly Inflation-Adjusted Base Overage Amount.

The GDP Implicit Price Deflator (annual) is collected from the US Bureau of Economic Analysis. This is used to calculate the GDP Actual Deflator Value for all prior years after 2010, as shown. The Inflation Factor (1 + the GDP Actual Deflator Value) is also calculated for all prior years after 2010. Since the annual GDP Implicit Price Deflator for the current year is not known, the GDP Current Year Deflator Value is assumed to be the average of the prior three years. For a given month of the current year, the Inflation Factor for the partial year is calculated as shown as the product of (1 + the GDP Current Year Deflator Value)^(monthly period / 12). The Cumulative Inflation Factor is the product of all the historical Inflation Factors after 2010, and the partial year Inflation Factor for the current year.

Using the assumed GDP Implicit Price Deflators, the following is an example calculation of the Sales Tracking Amount and the Monthly Inflation-Adjusted Base Overage Amount for June of 2020.

* Assumes current period is June (N=6)

Cumulative GDP Deflator (product of 1+X values from 2011-2020)	1.1933
Assumed Savings Tracking Amount for June 2020 (nominal \$)	\$4,000,000
Amount added to CRCSTA in \$2010 ($=4,000,000/1.193$)	\$3,352,087
Monthly Base Overage Amount (\$2010)	\$174,000,000
Cumulative Inflation Factor (product of 1+X values from 2011-2020)	1.1933
Monthly Inflation-Adjusted Base Overage Amount	\$207,631,870

BEA (US Bureau of Economic Analysis) data from:

<http://tinyurl.com/3dfbjm>

SCHEDULE 6.2(a)

INSURANCE REQUIREMENTS

All insurance coverage shall be issued by insurers licensed or otherwise authorized to do business in the State of Illinois. Insurance required under this Agreement shall be primary in all instances and not contributory with any other insurance or self insurance that may be available to the Buyer. Insurance required under this Agreement is:

1. General Liability. Occurrence form comprehensive commercial general liability insurance with limits of not less than \$2,000,000 for each occurrence and \$4,000,000 in the aggregate. Such coverage can be made up of a combination of primary and excess coverage policies.
2. Workers Compensation and Employer's Liability.
 - (a) Workers' compensation insurance as required by Applicable Law, including the Longshoremen and Harbor Workers Compensation Act, if applicable; and
 - (b) Employer's liability insurance with limits established by Applicable Law, but in any case with limits of not less than \$1,000,000 per occurrence.
3. Vehicle Liability. Comprehensive vehicle liability insurance, covering all vehicles and automobiles whether owned, non-owned, leased or rented when used in connection with performance of this Agreement and including coverage for bodily injury and property damage in an amount not less than \$2,000,000, combined single limit.
4. Property Insurance. All risk property insurance, including flood and earthquake coverage, with limits that provide for full replacement cost of the Plant in the event of a total loss with a maximum deductible of \$1 million. Property insurance shall address losses during construction (i.e. builder's risk insurance) and during operations following construction.
5. Excess Liability. Excess/umbrella liability insurance written on an occurrence basis providing coverage limits which, when combined with the primary limits, will not be less than \$50,000,000 per occurrence.

Above limits and any applicable deductibles are subject to being commercially available in the insurance market.

SCHEDULE 6.2(b)

INSURANCE REQUIREMENTS FOR CONSTRUCTION PARTICIPANTS

All insurance coverage shall be issued by insurers licensed or otherwise authorized to do business in the State of Illinois. Insurance required under this Agreement shall be primary in all instances and not contributory with any other insurance or self insurance that may be available to the Buyer. Insurance required under this Agreement is:

1. General Liability. Occurrence form comprehensive commercial general liability insurance with limits of not less than \$2,000,000 for each occurrence and \$4,000,000 in the aggregate. Such coverage can be made up of a combination of primary and excess coverage policies.
2. Workers Compensation and Employer's Liability.
 - (a) Workers' compensation insurance as required by Applicable Law, including the Longshoremen and Harbor Workers Compensation Act, if applicable; and
 - (b) Employer's liability insurance with limits established by Applicable Law, but in any case with limits of not less than \$1,000,000 per occurrence.
3. Vehicle Liability. Comprehensive vehicle liability insurance, covering all vehicles and automobiles whether owned, non-owned, leased or rented when used in connection with performance of this Agreement and including coverage for bodily injury and property damage in an amount not less than \$2,000,000, combined single limit.
4. Property Insurance. All risk property insurance, including flood and earthquake coverage, with limits that provide for full replacement cost of the Plant in the event of a total loss with a maximum deductible of \$1 million. Property insurance shall address losses during construction (i.e. builder's risk insurance) and during operations following construction.
5. Excess Liability. Excess/umbrella liability insurance written on an occurrence basis providing coverage limits which, when combined with the primary limits, will not be less than \$50,000,000 per occurrence.

Above limits and any applicable deductibles are subject to being commercially available in the insurance market.

*Chicago Clean Energy, LLC's January 3, 2012 Corrected Version of the
Form of SNG Agreement as Issued by the Illinois Power Agency October 11, 2011*

SCHEDULE 9.7

MONTHLY RECONCILIATION PROCESS

1.	Seller identifies Applicable MCQ for month and informs Buyer.	2 business days prior to beginning of Contract Month
2.	SNG is produced by Plant and sold by Seller during the month.	Begin 1st minute of Contract Month; End 12 midnight last day of Contract Month
3.	Seller informs Buyer and Trustee of total quantity of Conforming SNG delivered to the Title Transfer Point and MCQ and Incremental Production quantities for the month.	Within 2 business days after the end of Contract Month
4.	Seller informs Buyer and Trustee of the Monthly Weighted Average Chicago City-gate Price.	Within 2 business days after the end of Contract Month
5.	Trustee provides Seller a statement of the balance in the CRCSTA as of the end of the prior month.	Within 2 business days after the end of Contract Month
6.	Trustee provides Buyer and Seller a statement of the status of repayment of the Initial Deposit into the CPR Account.	Within 2 business days after the end of Contract Month
7.	Seller provides Trustee with calculation of Fuel Component, the Carbon Capture and Sequestration Component, <u>Transportation and Marketing Component</u> , and Net Incremental Revenues, as well as Adjustments for Payment of New Taxes and Adjustments for Changes in Governmental Requirements, if any.	Within 5 business days after the end of Contract Month
8.	Trustee calculates the Monthly Contract Invoice Price and (on behalf of Seller) invoices Buyer for MDQ at the Monthly Contract Invoice Price and (on behalf of CPRA) invoices Buyer for the Positive Market Differential, with copies sent to Seller.	10th day of month following applicable Contract Month
9.	Buyer sends payments to Trustee for MDQ times Monthly Contract Invoice Price and for the Positive Market Differential.	10th day following Buyer's receipt of Seller's invoice from Trustee
11.	Trustee distributes funds from Buyer's CPR Account as needed and available to pay Seller.	2nd day following receipt of the funds from the Buyer
12.	Trustee distributes funds from Seller's Project Revenue Account as needed and available to pay Seller.	2nd day following receipt of the funds from the Buyer

SCHEDULE 14.1(b)

MINIMUM QUALIFICATIONS FOR TRANSFEREES AND REQUIREMENTS FOR
FACILITY TRANSFER

The Project is a complex facility and requires considerable know how and experience for effective and reliable operations. A transferee shall demonstrate in writing, for review by an Independent Engineer, that a qualified Management Team will be provided and that an effective Operational Plan has been developed. Transfer of ownership will require a transition period where existing plant staff, spares, supplies and related items cannot be removed by the prior owner.

A qualified Management Team will consist of key individuals that will be responsible for planning and management of technical and business activities associated with operations, maintenance, key technology support, SNG delivery, fuel procurement, byproduct sales, environmental compliance, safety, contract responsibilities, public relations, accounting and related business activities. Transferee will submit a proposed organization chart with resumes for key positions to demonstrate that individuals with adequate education, training, skills, and experience are included who will be fully capable to manage the Project.

An Operational Plan will consist of a written description of how the Management Team will work with the Project's contractors, licensors, employees, suppliers, offtakers and other stakeholders including government agencies to successfully operate the Project to achieve the objectives of the SNG Purchase and Sale Agreement. The plan will describe how the Management Team will be organized, key responsibilities, Project accounting and reporting approach, records management, training, O&M staffing, spare parts management, fuel purchasing approach, byproduct sales approach, environmental compliance, and public relations.

The Operational Plan will include a detailed O&M Plan, which will include an O&M organization chart, staffing plan, annual budgets, operating and maintenance practices and procedures, including a long term O&M budget and schedule showing anticipated major maintenance and overhauls.

Seller must not remove from the facility operating and maintenance manuals, procedures, inspection reports, maintenance records, facility design documents and drawings or any items needed for facility operation and maintenance including spare parts and supplies.